No. 12,987

IN THE

ited States Court of Appeals

For the Ninth Circuit

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rnia Electric Power Company, :poration,	
	Petitioner,
vs.	
l Power Commission,	
	Respondent.

FILED

MAR 31 1952

PAUL P. O'BRIEN
CLERK

ef of California Public Utilities Commission as Amicus Curiae.

n for Review of an Order of Federal Power Commission.

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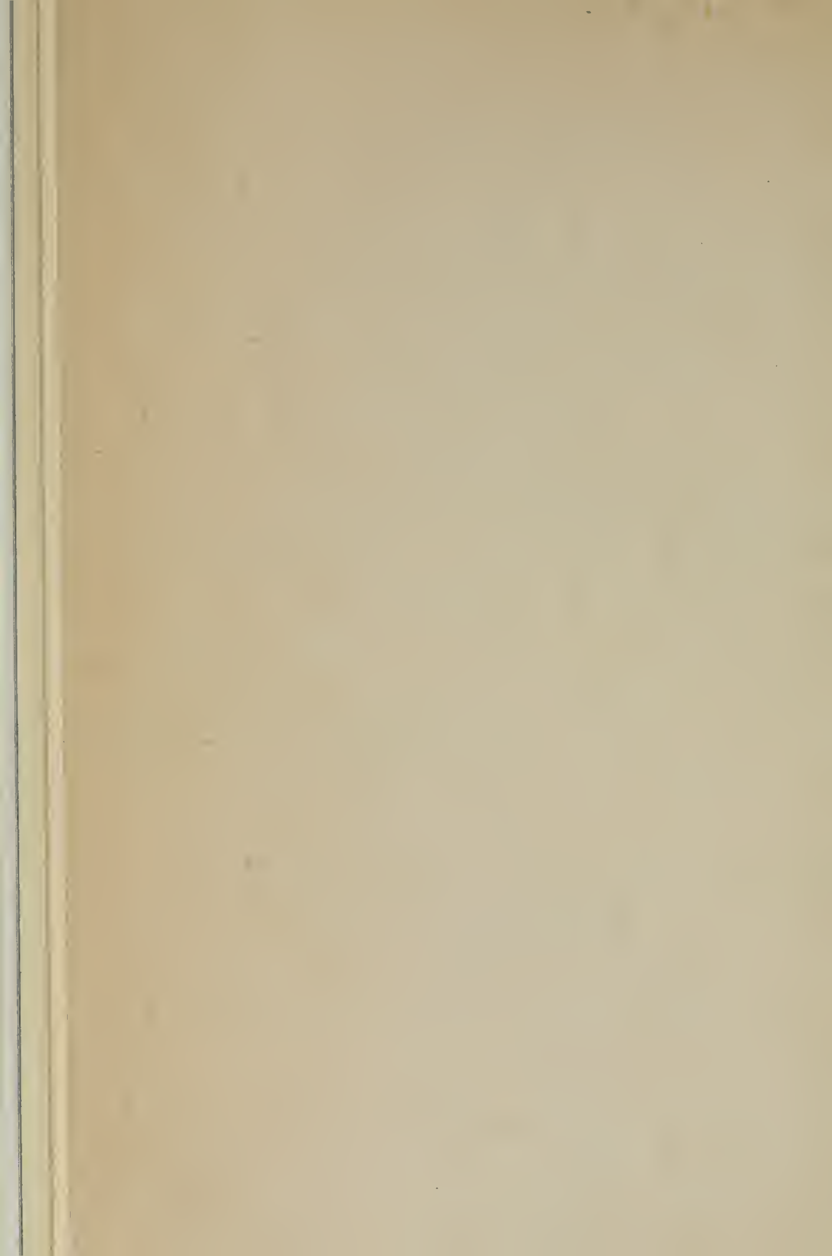

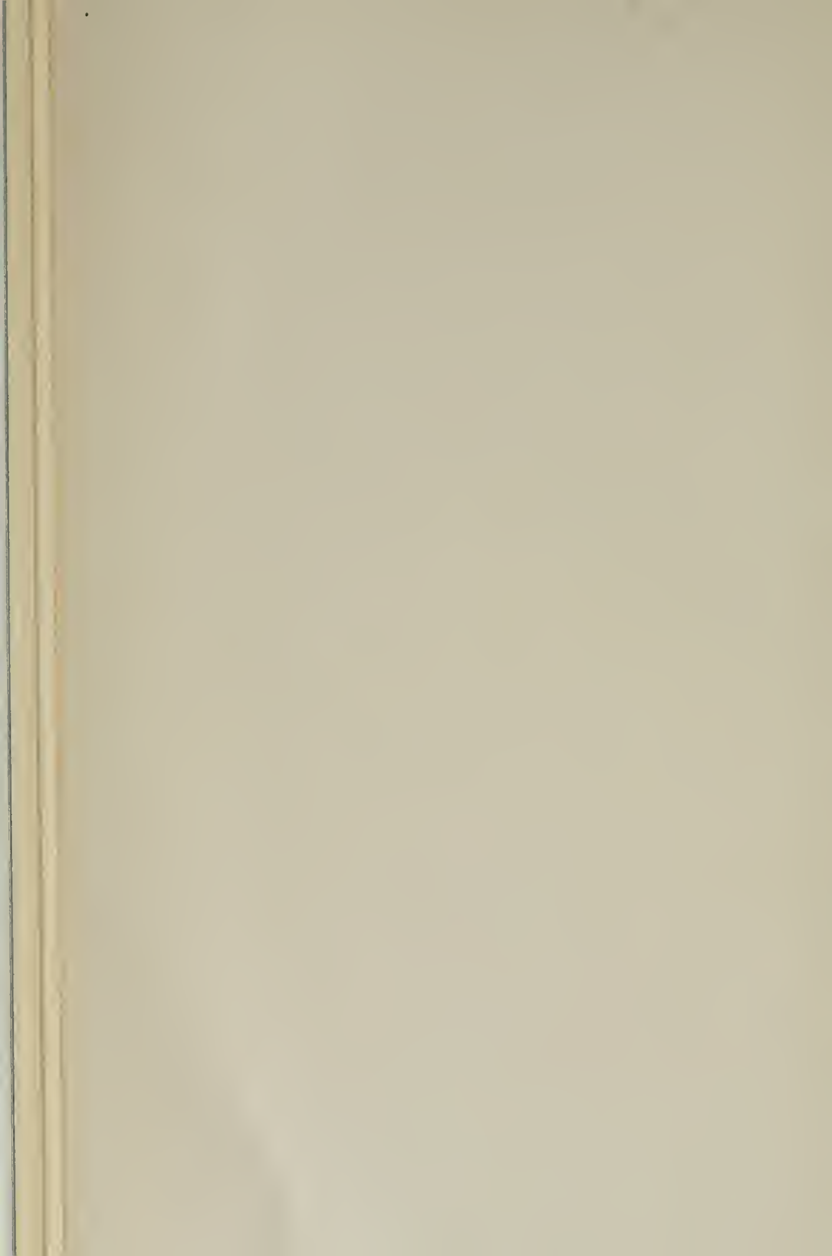

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Jonas v. Swetland, 119 Ohio St. 12, 162 N.E. 45, PUR 1
825 (1928) ....

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Napa Valley Electric Co. v. Railroad Commission, 251
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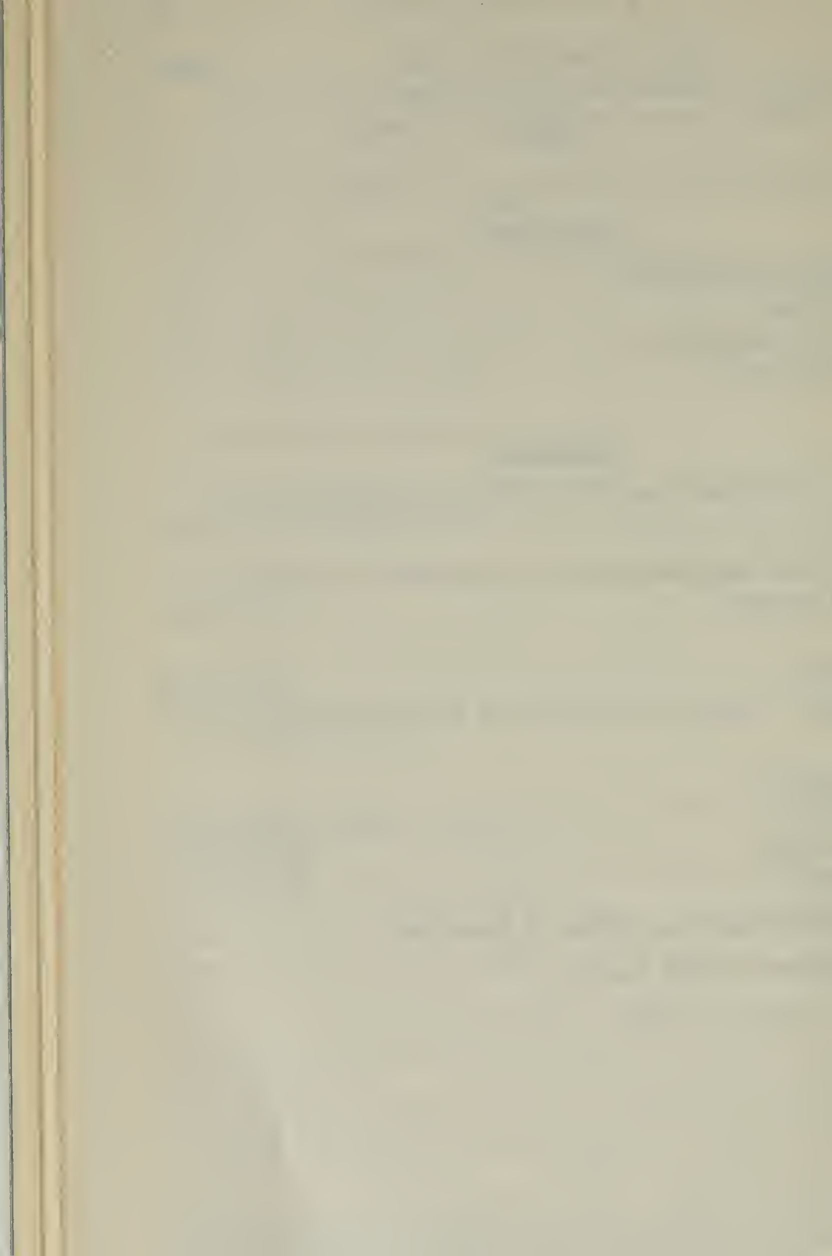

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NIA ELECTRIC POWER COMPANY,
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POWER COMMISSION,

Respondent.

F OF CALIFORNIA PUBLIC UTILITIES COMMISSION AS AMICUS CURIAE.

for Review of an Order of Federal Power Commission.

INTRODUCTION.

alifornia Public Utilities Commission respectfully its presentation herein, being mindful that an *curiae* brief may properly presume upon the attention only if it serves to illuminate the course nent or advances additional material for consider- 'he California Commission agrees with California Power Company that the order of the Federal

ever, the California Commission's approach is n
respects the same. The plan, therefore, will be t
the pertinent arguments and to develop those v
quire further analysis, to the end that the fallaci
underlie the Federal Power Commission's claim
diction may be readily detected.

The California Commission has more than pa
terest in the question. On July 3, 1951, it issued
No. 45913, reported in 50 Cal. P.U.C. 749, att
Appendix A hereto. The question of state versu
jurisdiction was thoroughly explored because it w
sary to determine whether certain rate increase
ized generally by the California Commission to C
Electric Power Company were to be applied to
the Navy and Mineral County. The California
sion had the benefit of the same testimony and
briefs which were before the Federal Power Co
in the proceeding which led to the decision he
attack. The California Commission concluded th
have jurisdiction. Attention is respectfully invit
corresponding conclusion of the federal Exami
September 5, 1950, that the Federal Power Co
did not have jurisdiction. His proposed decision
in the Record herein beginning at page 13, merits
ful study as it is a well-prepared, well-reaso
logical opinion. Seven months after it was filed,
eral Power Commission, Commissioner Nelson L
dissenting, issued the precisely contrary opinion

g him, without explanation, in his rulings upon issibility of evidence.

'alifornia Commission decision was made the sub-)etitions for writs of review filed before the Cali- Supreme Court by the United States (Navy De- t) and by Mineral County. Writs of review were n January 21, 1952, and petitions for rehearing of ial were denied on February 18, 1952. Under Cali- rocedure, the California Supreme Court's action to a determination upon the merits.

)uthern California Edison Co. v. Railroad Commission, 6 Cal. 2d 737, 747 (1936);

apa Valley Electric Co. v. Railroad Commission, 251 U.S. 366, 371-373 (1920);

inta Monica v. Railroad Commission, 179 Cal. 467 (1918).

)llowing outline of dates presents graphically the of events alluded to:

:dings Commencing n Calif. P.U.C.	**Proceedings Commencing in F.P.C.**
:2, 1949, Calif. Elec. Co. filed application to alif. P.U.C. determine : certain rate increases to sales to Navy and l County.	
hearing *Oct. 7, 1949.*	
	February 15, 1950, F.P.C. issued order to show cause against Calif. Elec. Power Co.

Proceedings Commencing in Calif. P.U.C. (Continued):

Proceedings Comm[encing] in F.P.C. (Continued[)]

March 20, 1950
Concurrent hearing before Calif. and Fed. Commissions on jurisdictional question. Briefs subsequently filed by the appearances.

September 5, 1950, Decision filed by [...] for F.P.C., denyi[ng] jurisdiction.

April 13, 1951, F.P.[C.] 212, reversing Exa[miner] asserting jurisdicti[on]

June 5, 1951, F.P.[C.] rehearing.

June 21, 1951, Ca[...] Power Co. filed P[...] Review in this Cou[rt] peals for the Nint[h]

July 3, 1951, Calif. P.U.C. Decision 45913, finding jurisdiction in the California Commission.

January 21, 1952, California Supreme Court sustained Decision 45913 by denying writs of review, S. F. No. 18463 and S. F. No. 18464.

February 18, 1952, California Supreme Court denied rehearing, S. F. No. 18463 and S. F. No. 18464.

bject to Federal Commission regulation in some is caught between conflicting orders respecting ales. Under the Federal Power Act there cannot taneous jurisdiction by state and federal author- such sales. It is respectfully submitted that the of the California Commission in its Decision s approved by the California Supreme Court, is nd if so, it follows that the Federal Power Com- has no jurisdiction over these sales.

proceeding with the argument one or two pre- observations will be appropriate.

e reads the opinion of the Federal Power Com- and its brief before this Court, one is impressed bsence in general of differentiation between the ts pertaining to the sales to the Navy and those ig to the sales to Mineral County. Such approach confusion in a complex field. While a number of inent arguments apply equally to both types of ere are certain arguments which apply specifically to one or the other. For that reason, care will in the analysis here to keep the questions prop- arated.

hearing upon the order to show cause, the staff Federal Power Commission introduced evidence that, while most of the electric energy sold to y and to Mineral County is derived from licensed there are times when all or a portion of it

portion of the electric energy sold, the best-rea
terpretation of the Federal Power Act makes S
of Part I the applicable section in determining
tion over the sales to the Navy and Mineral C
will be shown that by the application of that s
jurisdiction is lodged in the Federal Power Co
upon the facts. However, the applicability of S
need not be finally determined because, as will l
no Federal Power Commission jurisdiction lies,
the Act be construed to make Part I, Section
cable or Part II, Section 201(b).

Similarly, it will be shown to be unnecessary
mine whether the sales are in intrastate or
commerce. The Federal Power Commission wo
that its jurisdiction does not lie if the sales are
state commerce. The argument here will assume
sales both to the Navy and Mineral County are
state commerce. It will be demonstrated that,
standing, no Federal Power Commission jurisdi

An outline of the pertinent arguments establ
absence of Federal Power Commission juris
presented in the belief that it may prove of ma
It is divided into three main headings. Point I
arguendo wholesale sales in interstate comme
licensee. We deny that the sales to the Navy a
sale though we concede that the sales to Miner
are of that character. However, since the ord
Federal Power Commission lumps the sales tog

Point I is presented to show that, even upon *that* the Federal Power Act, properly construed, art I applicable and excludes Federal Commission on provided the states directly concerned have y commissions and have not been shown unable on the rates to be charged. This, we maintain, terpretation of the Act which respects the intent ress.

II deals solely with sales to the Navy. It shows, t Part I, Section 20, precludes Federal Power ion jurisdiction because the conditions to its are not met. Secondly, it shows that Part II apply for a number of reasons in addition to sented in Point I.

III deals solely with sales to Mineral County. g that wholesale sales are here involved, it first at Part I, Section 20, precludes Federal Power ion jurisdiction because the conditions to its are not met. Secondly, it shows that Part II does y for two reasons in addition to that presented I.

OUTLINE OF ARGUMENT.

Point I. The Federal Power Act must be c
in its entirety, giving equal weight to Parts I an
must be interpreted so as to avoid conflict bet
various sections. By applying such recognized p
of construction, the Act is found to exclude
Power Commission jurisdiction over interstate
sales by a licensee where the states directly c
have regulatory commissions and there is no
that such states are unable to agree on the ra
charged for such sales.

A. The Federal Power Act must be construe
ing to recognized rules of statutory con

B. The jurisdictional sections of the Act ap
interstate sales, Part I, Section 20, and
Section 201(b), must be construed togethe
effect to the intent of Congress. Such
tion makes Section 20 apply to interstate
wholesale by a licensee where the states
concerned have regulatory agencies a
states are not shown unable to agree on
to be charged.

1. Part II was enacted to give the Feder
Commission jurisdiction only in the
state regulation revealed by the *Attl*
cision.

2. By virtue of the Water Power Act

directly concerned had regulatory commissions and such states were not shown unable to agree on the rates to be charged for such sales.

'he foregoing interpretation of the Federal Power ict applies even though part of the power sold y the licensee is derived from non-licensed ources.

Effect of existing court decisions.

Sales to the Navy.

'ederal Power Act does not give the Federal Commission jurisdiction over the sales to the hether Part I, Section 20, applies, covering both sed and non-licensed portions of the energy sold, II, Section 201(b), applies, covering both the and non-licensed portions, or Part I applies to ised portion and Part II applies to the non- portion of the energy sold.

ssume Part I applies, extending to the non- icensed as well as the licensed portion of the nergy. If the sales to the Navy be found to be n interstate commerce, it is enough under Sec- ion 20 that the State of California has provided commission with authority to prescribe rates harged by California Electric Power Company ecause California is the only state "directly con- erned."

state commerce, they are exempt from r
under Part II for three separate reasons
tion to that given in Point I hereof. An
such reasons is sufficient in itself to precl
lation under Part II.

1. The sales are not sales at wholesal
quired by Section 201(b) because they
sales "for resale" as specified in
201(d).

2. The sales are not sales at wholesal
quired by Section 201(b) for the a
reason that they are not sales to a '
as specified in Section 201(d) and a
in Section 3(4).

3. Section 201(f) provides that Part II
apply to the United States. Such lang
be construed to exempt sales to the N
regulation under Part II.

C. Assume Part I applies to the licensed p
the energy sold and Part II applies to
licensed portion.

1. As to the licensed portion, the same a
against Federal Power Commission ju
apply which are set forth in II. A. a

2. As to the non-licensed portion, the sa
ments against Federal Power Comm
risdiction apply which are set forth

. *Sales to Mineral County.* (Mineral County
er System is the name used by Mineral County,
ıda, in operating an electrical distribution sys-
)

'ederal Power Act does not give the Federal
ommission jurisdiction over the sales to Mineral
whether Part I, Section 20, applies, covering
licensed and non-licensed portions of the energy
Part II, Section 201(b), applies, covering both
sed and non-licensed portions, or Part I applies
censed portion and Part II applies to the non-
portion of the energy sold.

ssume only Part I applies, extending to the non-
censed as well as the licensed portion of the
nergy. If the sales to Mineral County be found
be in interstate commerce, the requirements of
ection 20 for precluding Federal Power Commis-
on jurisdiction are met, because: (a) the states
directly concerned," viz., California and Nevada,
ave provided commissions with authority to en-
orce the requirements of Section 20 within their
espective states, and (b) such states have not
een shown to be unable to agree on the rates
rescribed by the California Commission.

Assume Part II applies, extending to the licensed
s well as the non-licensed portion of the energy.
f the sales to Mineral County be found to be in
iterstate commerce, they are exempt from regula-

1. The sales to Mineral County are not
wholesale as required by Section 20
cause they are not sales to a "pe
specified in Section 201(d) and as d
Section 3(4).

2. Section 201(f) provides that Part II
apply to a political subdivision of a st
language may be construed to exemp
Mineral County from regulation unde

C. Assume Part I applies to the licensed p
the energy sold and Part II applies to
licensed portion.

1. As to the licensed portion, the same a
against Federal Power Commission
tion apply which are set forth in III.

2. As to the non-licensed portion, the sa
ments against Federal Power Commi
risdiction apply which are set forth i
above.

In the argument which follows the number a
designations correspond with those in the O
Argument above.

ARGUMENT.

THE FEDERAL POWER ACT MUST BE CONSTRUED S ENTIRETY, GIVING EQUAL WEIGHT TO PARTS I II, AND MUST BE INTERPRETED SO AS TO AVOID LICT BETWEEN ITS VARIOUS SECTIONS. BY APPLY- SUCH RECOGNIZED PRINCIPLES OF CONSTRUCTION, ACT IS FOUND TO EXCLUDE FEDERAL POWER COM- ON JURISDICTION OVER INTERSTATE WHOLESALE S BY A LICENSEE WHERE THE STATES DIRECTLY ERNED HAVE REGULATORY COMMISSIONS AND E IS NO SHOWING THAT SUCH STATES ARE UNABLE GREE ON THE RATES TO BE CHARGED FOR SUCH S.

Federal Power Act must be construed according to nized rules of statutory construction.

e of its constitutional power over public lands , Sec. 3), Congress has undoubted power to sub- s by licensees, whether interstate or intrastate, tion by a federal agency or to require that they ted to state regulation. *Light v. United States,* 523 (1910); *Camfield v. United States,* 167 U.S.). Similarly, where no licensing is involved but sales in interstate commerce, Congress has, by the interstate commerce clause (Art. I, Sec. 3), d power to subject such sales to regulation by agency or to require subjection to state regula- where the interstate commerce clause, standing uld proscribe state regulation. See *Southern Pa- v. Arizona,* 325 U.S. 761 (1944).

f it be assumed that interstate wholesale sales ensee are involved, Congress would have un-

difficulty is that Congress seems in terms to h
scribed regulation for such sales in both Parts
If *non-wholesale* sales by a licensee were involv
would be no overlap because Part II expressl
only to wholesale sales. By the same token, if
sales by a *non-licensee* were involved, there wou
overlap because Part I expressly applies only to
But, where both the *wholesale* element and the
element exist for the same sales, Parts I and
seem applicable.

The basic problem then is to find out what
meant and, in that connection, two principles of
construction may be involved, first, that a statute
read in its entirety and, second, that conflicting p
must, where possible, be so interpreted as to
the conflict.

It is, of course, true, as the Company's open
points out (pages 27-31), that Part I has an
dating back to the early 1900's and that it is e
a reenactment of the Water Power Act of 1920.
true that Part II has no such antecedents and
historical pressures which produced it were quite
and much more recent. Notwithstanding, it mu
forgotten that the Federal Power Act was enact
act in 1935 and that Parts I and II date from t
There is no warrant for giving them unequal
or for presuming that Part II should be reg
subsequent legislation expressing a more recent

imited Part I to *non-wholesale* sales by licensees
much ease as it might have limited Part II to
sales by *non-licensees.* In fact, it did neither.
reting the Federal Power Act, it is imperative
y the impression that Part II is superior. That
rror into which the Court of Appeals for the
of Columbia has fallen. *Pennsylvania Water and
o. v. Federal Power Commission,* 193 F. 2d 230
ert. granted,* February 4, 1952.

Parts I and II must receive equal weight, the
of repeal by implication, which is frowned upon
annot even be invoked.

inciple which does properly apply is that two
in an act, seemingly in conflict, must be inter-
f possible, so as to avoid conflict. Such course
not difficult here and is, indeed, compelled unless
nent history of the legislation through Congress
s to be ignored.

**urisdictional sections of the Act applying to interstate
Part I, Section 20 and Part II, Section 201(b), must be
ued together to give effect to the intent of Congress.
construction makes Section 20 apply to interstate sales
olesale by a licensee where the states directly concerned
regulatory agencies and such states are not shown
e to agree on the rates to be charged.**

t II was enacted to give the Federal Power
on jurisdiction only in the gap in state regula-
aled by the *Attleboro* decision.

Steam & E. Co., 273 U.S. 83 (1927)), but did *n*
to go beyond, leaving to the states whatever
they possessed prior to the enactment of Part
Connecticut Light & Power Co. v. Federal Pow
mission, 324 U.S. 515 (1945). This intent is cl
forth in Part II, Section 201(a), which has been
as the policy section:

> ". . . Federal regulation of . . . the sale o
> at wholesale in interstate commerce is nec
> the public interest, such Federal regulation,
> to extend only to those matters which are no
> to regulation by the states."

It is even more clearly set forth in the juri
provisions of Part II, Section 201(b):

> "The provisions of this Part shall apply
> the sale of electric energy at wholesale in
> commerce, but shall not apply to any othe
> electric energy or deprive a state or state
> sion of its lawful authority now exercised
> exportation of hydroelectric energy which
> mitted across a state line. . . ."

The obvious question then is, what *was* the gap
by the *Attleboro* decision and what sales *wer*
to regulation by the states prior to the enact
Part II.

2. By virtue of the Water Power Act of 19
was no gap in state regulation prior to the e
of Part II as to interstate wholesale sales by a
provided the states directly concerned had

ater Power Act, substantially adopted as Part I
ederal Power Act in 1935, was enacted in 1920.
d only to licensees. Therefore, it had no applica-
en the Supreme Court was faced in 1927 with
presented in the *Attleboro* case, which involved
sed power. The Court there held, *where there
ederal statute delineating state and federal juris-*
hat a state cannot regulate the rates charged by a
tric utility for current sold to a foreign electric
r resale in another state and delivered at the
ndary, inasmuch as the interstate business car-
between the two utilities is essentially national
ter and state regulation would constitute a direct
pon interstate commerce, placing a direct re-
pon that which, in the absence of federal regula-
ld be free.

s obvious that, had *licensed* power been involved
ttleboro case, state regulation would have been
oper if the two states directly concerned had
d to have regulatory agencies and such states
been found unable to agree on the rates to be
because the Water Power Act of 1920 would
lied. In other words, a machinery already set up
ress closing the gap in state regulation would
available. It follows that, given the conditions
in Section 20, there was no gap in the regulation
ed power prior to 1935 because Congress had
losed it. That Congress has power, if it chooses,

does not constitute an improper delegation of
sional power to the states.

Counsel for the Federal Power Commission w
tend that the gap intended to be closed by Par
sisted not only of the gap revealed in the *Attle*
where there was *no* applicable existing federal le
but a particular gap which *would* have existed
Congress already closed it. Such construction
defies the plain meaning of Sections 201(a)
quoted above, but is out of harmony with the
representations to Congress in 1935 that the pro
would not take from the states any jurisdicti
they were previously empowered to exercise. N
tion was made between power which the sta
exercise in the absence of federal legislation, a
stance, where retail rates of sales in interstate
were involved (*Pennsylvania Gas Co. v. Publi*
Commission, 252 U.S. 23 (1920)), and power
states could exercise because of already existin
legislation.

Counsel for the Federal Power Commission w
tend that, even if the gap intended to be close
consisted only of the gap revealed in the *Attl*
cision, Part II must, notwithstanding, be con
a later expression of Congress and, therefore, c
whenever sales by a licensee are at *wholesale.*
words, counsel would argue that Part I, Sectio
plies only to sales by a licensee *at retail* since

t must fall because, as we have noted, there is
nt to assume Part II expresses a later Congres-
tent than Part I or that it is to be given any
'orce. Furthermore, there is nothing in the lan-
Part I itself which would justify the conclusion
vas intended to apply only to retail sales by
e. Indeed, the language clearly shows that whole-
s by a licensee were *particularly* contemplated.
0 reads in part:

'hat when said power or any part thereof shall
into interstate or foreign commerce the rates
ged and the service rendered by any licensee
or by any person . . . purchasing power from
licensee for sale and distribution or use in
c service shall be reasonable . . ."

ws that upon a proper construction of the Fed-
er Act, Part I, Section 20 applies to preclude
Power Commission jurisdiction over interstate
sales by a licensee, provided the states directly
l have regulatory agencies and such states are
n unable to agree on the rates to be charged. It
hown that, even assuming the sales both to the
l Mineral County are such sales, the conditions
n 20 are met and preclude Federal Power Com-
urisdiction.

C. The foregoing interpretation of the Federal Powe plies even though part of the power sold by the derived from non-licensed sources.

Section 20 reads in part:

> "That when said power [licensed power part thereof shall enter into interstate o commerce the rates charged . . . by any suc . . . shall be reasonable . . ."

It will be noted that the regulation prescribe tion 20 runs to the "licensee," not merely to th licensed power by the licensee. Thus, it is i that some portion of the power which the lice is non-licensed. Once a licensee the utility is Section 20 whenever it sells power in interstate and at least a portion of that power is licensed.

Here, again, the seeming conflict with Part II 201(b), can be resolved if it is recognized that interpretation of Section 20 was equally valid be when identical language existed in the Water P Thus, prior to 1935, a licensee engaged in inters was subject to regulation as provided in the pr section to Section 20, both as to the portion which was licensed and that which was not. Ac there was no gap at the time Part II was enacte fore, Part II does not apply.

Should it be found that the foregoing interpre Section 20 is too broad and allows state regula over licensed power sold by a licensee, it does n

whole is given to the federal agency under Part argument is that it would be impractical to have ral Power Commission regulate some fraction tes and the states the balance; *ergo,* regulation to the federal agency. The reverse argument made just as plausibly: if it would be imprac- ave federal and state agencies regulating respec- tions of the same sales, *ergo,* regulation must go ates. Again, counsel for the Federal Power Com- labor under the misconception that Part II is a paramount expression of Congress to be n case of conflict with Part I. The real solution ndicated, in determining what Section 20 meant the Water Power Act) prior to the enactment II. To the extent that Section 20 closed the gap tion, Part II does not apply.

of existing court decisions.

hree decisions have dealt with the problem here l:

fe Harbor Water Power Corp. v. FPC, 124 F.2d 800 (3d Cir. 1941), *cert. denied,* 316 U.S. 663 (1942). Referred to as the "First Safe Harbor Case."

fe Harbor Water Power Corp. v. FPC, 179 F.2d 179 (3d Cir. 1950), *cert. denied,* 339 U.S. 957. Referred to as the "Second Safe Harbor Case."

nnsylvania Water & Power Co. v. FPC, 193 F.2d

licensee may be subjected to regulation unde
There, the Federal Power Commission did in fa
take to regulate under Part I, and the court
F.2d at 809):

> ". . . whether or not the Federal Power Co
> has jurisdiction over Safe Harbor as a pub
> transmitting and selling electric energy at
> in interstate commerce under the provision
> II . . . is immaterial. The Commission has
> fix the rates charged by Safe Harbor unde
> thority which Section 20 confers upon it wi
> to licensees of water power projects upon
> rivers which is an entirely different basis fo
> jurisdiction."

In that proceeding the order of the Federal Co
was set aside as beyond its jurisdiction because
no showing that the respective states were unabl

In the *Second Safe Harbor Case* the facts sh
the states directly concerned *were* unable to agr
fore, Federal Power Commission jurisdiction la
less of whether the court construed the Fede
Act to make Part I applicable or Part II. The
pressly left the question open because it found
sistency between Parts I and II in certain valu
tions which had to be applied. Said the court
at 186):

> "It can be argued with some plausibility
> since Safe Harbor is a 'licensee' it must be
> as such even though it is also a 'public uti

ons 205, 206 and 208, Part II, are not conflicting
consistent.''

rgument above shows, we are in general agree-
h the Third Circuit's approach of seeking to
Parts I and II of the Act. However, we contend
ıpplying such approach Part I alone applies to
sales in interstate commerce by a licensee. The
. not have to decide the question because the
ould have been the same in either event. The
rue in the proceeding here.

Pennsylvania Water case the Court of Appeals
District of Columbia has taken the view that
wholesale rates by a licensee are subject only
II. However, the court's whole argument pro-
on the erroneous premise that Part II repre-
later expression of Congressional intent than
The United States Supreme Court has granted
..

tters stand, the Third Circuit and the District
bia Circuit have taken inconsistent approaches
g the interrelation of Parts I and II. The pro-
ere presents another opportunity for a consider-
hat problem.

POINT II. SALES TO THE NAVY.

THE FEDERAL POWER ACT DOES NOT GIVE
ERAL POWER COMMISSION JURISDICTION
SALES TO THE NAVY, WHETHER PART I, S
APPLIES, COVERING BOTH THE LICENSED
LICENSED PORTIONS OF THE ENERGY SOLD, O
SECTION 201(b), APPLIES, COVERING BOTH THE
AND NON-LICENSED PORTIONS, OR PART I A
THE LICENSED PORTION AND PART II APPLI
NON-LICENSED PORTION OF THE ENERGY SOLD

A. Assume only Part I applies, extending to the non well as the licensed portion of the energy. If the Navy be found to be in interstate commerce, it under Section 20 that the State of California has commission with authority to prescribe rates California Electric Power Company because C the only state "directly concerned".

It may be urged parenthetically that the sa Navy are in *intrastate* commerce since they ar mated wholly within the state, where delivery and since the purchaser is an arm of the fe ernment. If that conclusion is correct, then, c Federal Power Commission jurisdiction lies, eit Part I or Part II. That much would be ad counsel for the Federal Power Commission.

The argument herein, however, will be prem the assumption that even the sales to the Na interstate commerce.

If it be further assumed that Part I is the part, as indeed we demonstrated in Point I, pr conditions of Section 20 are met, then, to preclu

ection 20, Congress has conferred jurisdiction Federal Power Commission only if:

any of the states "directly concerned" not provided a commission or other authority to ce the requirements of Section 20 within such ' ("requirements within such state" apparently ring to the provision that the rates and serv- y licensees or persons purchasing from licensees esale in public service shall be reasonable), and

even though the requisite state commissions her authorities have been provided, only if the "directly concerned" are "unable to agree" e service or rates through their properly con- ed authorities.

ase of the sales to the Navy, California is the e "directly concerned" since Nevada has no n over the Navy, either as to the rates the Navy alifornia Electric or as to the rates the Navy ts tenants. The mere presence of the Naval n within Nevada does not make Nevada "di- cerned," for that phrase has obvious reference uation where the state's concern relates to the or the charges by, its own citizens or residents. is "directly concerned" only because Cali- ectric Power is a company engaged in selling within the state.

dly, the California Public Utilities Commission l of state commission contemplated in condition e, for it has broad powers over the rates of

California Public Utilities Code, Stats. 1951, ch
201, et seq., as amended.

Since only one state is "directly concerned,'
tion can arise of inability as between two stat
concerned to agree on the reasonableness of
charged to the Navy.

It follows that Federal Power Commission j
is precluded because neither of the conditions t
cise as prescribed in Section 20 is present.

**B. Assume Part II applies, extending to the licensed
non-licensed portion of the energy sold to the N
sales are found to be in interstate commerce, they
from regulation under Part II for three separat
addition to that given in Point I hereof. Any
reasons is sufficient in itself to preclude regul
Part II.**

1. The sales are not "sales at wholesale" a
by Section 201(b) because they are not sales "f
as specified in Section 201(d).

Part II, Section 201(b) declares that:

> "The provisions of this Part shall app
> the sale of electric energy at wholesale in
> commerce, but shall not apply to any oth
> electric energy . . ."

The phrase "sale of electric energy at wholesa
fined in Section 201(d) to mean a "sale
energy to any person for resale."

As noted in the brief of California Electric P

ıse of the Government's Ammunition Depot."
ence showed that the use in fact made of the
s been consistent with such language. All of
is consumed on the Naval reservation; part is
e Depot's industrial operations; the balance is
he individuals and business establishments lo-
he reservation. Individuals may reside or con-
ess only so long as their presence is consistent
Navy's obligations. The lease agreements with
pying "public quarters" and with those occu-
low-cost housing project known as Babbitt, both
at the rental privilege ceases upon termination
ment by the Government. For the business con-
he Government issues a "Revocable Permit"
hat the concession is "for accommodation of
of the Depot."

t, all those who receive electricity from the
tenants at will, whose tenure depends solely
eeds of the Navy landlord. The Navy does not
public utility in furnishing electric service. It
merous occasions been held that public utility
bsent where the service is confined to tenants.
onas v. Swetland, 119 Ohio St. 12, 162 N.E. 45,
D 825 (1928), it was held that, where a realty
supplied electricity under contract to tenants
t hold itself out to the public generally, it was
blic utility. In *Re Fulton,* PUR 1930D 11
), it was said that the jurisdiction of the Mis-
lic Service Commission did not extend to the

to tenants through submeters. In *Holdred C*
Boone County Coal Corp., 97 W. Va. 109, 12
(1924), it was held that a coal company furni
tricity under contract to lessees was not a pub

Quite aside from the landlord-tenant relatio
Navy as an arm of the federal government wo
fall within the category of a public utility. Con
thermore, has never authorized it to engage i
of electric energy to the public generally.

In construing what Congress meant in using
"sales at wholesale" and "sales for resale" i
it must again be remembered that that Part w
to fill the gap revealed in the *Attleboro* case.
ously noted, that decision dealt with sales by
utility to another *public utility* for resale by
Certainly, Congress did not intend the Act,
adopted, to apply to a situation where the rese
in public service. The underlying purpose of P
to provide protection to ultimate consumers
public utility service by providing that a fede
should regulate the interstate wholesale rates
states were prevented from doing so by the
commerce clause. It must be presumed that
the Navy do not need to be protected agains
providence of the Navy in negotiating contrac
purchase of energy. This is especially true b
charges by the Navy to its tenants are not b
cost plus a "fair return". It must be further
that the Navy itself does not need the guiding

then that the Navy "resells" some of the
urchases, it is clearly not the kind of "resell-
mplated by Part II.

onnection reference may be made to the com-
ly Brief (p. 15, et seq.) in which it is pointed
ven if "sales at wholesale" and "sales for
re to be given a broader meaning than it is
ngress intended and that sales to tenants by
are to be included, it still would not entitle
l Power Commission to claim jurisdiction over
purchases by the Navy. The energy sold to
is a small fraction of the energy purchased
rmore, such fraction can be readily calculated.
nterstate Gas Co. v. FPC, 185 F(2d) 357 (3d

ales are not sales at wholesale as required by
l(b) for the additional reason that they are
o a "person" as specified in Section 201(d)
ned in Section 3(4).

or the Federal Power Commission admit that
the Navy do not literally fall within Part II
"sale of electric energy at wholesale" is de-
ction 201(d) to mean "a sale of electric energy
son for resale" and the Navy falls outside the
f "person" in Section 3(4). Counsel explain
eaning as a "quirk of draftsmanship utterly
" (Brief for Respondent, p. 21), and indulge
tation of legislative history which is intended

construction of a statute. Further on, counsel
in considering "the policy of the Act as a wh
clear that Congress could not have intended
from the regulation of Part II sales to the
Mineral County). At that juncture, as elsewh
brief, a dissertation is launched upon which i
if at all, only to one of the two types of sales i
in this instance, sales to Mineral County. C
possibly wish this Court to look upon the
municipality or similar political subdivision?
argument is that to exempt sales to a munici
regulation would mean that "Congress inten
prive consumers served by the thousands of
owned distribution systems, of the protection
viding from unjust and unreasonable interst
(Brief for Respondent, p. 23.) Obviously, the
is utterly irrelevant to the Navy. The Navy has
duty of entering into electric purchase contra
they are fair, regardless of any efforts by t
Power Commission to intervene. Furthermore
charges its tenants for electricity supplied upo
basis it deems proper, and, as shown in the i
ceeding, the charge is determined upon some
than the cost to the Navy plus a fair return.

That counsel for the Federal Power Commi
themselves not have much faith in the argu
espouse is indicated by the precisely opposi
taken by them in a brief filed in August, 1951

nia Electric Power Company have quoted from
it length in their opening brief. (Opening Brief,
We take the liberty of requoting a portion:
son' is limited in Sec. 3(4) to mean an 'indi-
or corporation.' This alternative definition ex-
the United States. For the United States is
neither a corporation nor an individual.

e of the word 'person' elsewhere in the Act
is this definition. As used throughout the Act,
rd 'person' cannot include the United States.
d, absurd or impossible situations would arise;
ensing provisions of the Act would apply to
my Engineers, Bureau of Reclamation, T.V.A.
her agencies of the Federal Government; pro-
of Part II of the Act relating to rates and
s in interstate commerce would apply to the
iry of the Interior, T.V.A., and other Federal
es.''

on 201(f) provides that Part II shall not apply
ted States. Such language may be construed
sales to the Navy from regulation under

ie California Commission in its Decision No.
ed on page 2 above, relied upon sections
201(f) in reaching the conclusion that Part
t apply to the sales to the Navy, a forceful
was made by the company in its brief before
ive federal and state regulatory agencies that
1(f) must be construed to exempt sales to the

36-39). It is so ably put that we take the liber
it in part (Tr., pp. 37-39):

" . . . the regulation by this Commissio
of electric energy, and the rates charged
the sovereign—Federal or State—thereby
sity limits the freedom of action of nego
purchase of electric energy by the sove
would thereby cause provisions of Part II
to the United States, a State or any poli
vision of a State, and such action would
United States, a State, or any political
of a State to be deemed to be included in
of the provisions of Part II of the Act.
ticular reference to the National Gover
intent seems clear that this agency not
affirmatively authorized, in its regulation
of electric energy at wholesale under P
supervise, directly or indirectly, the purch
tric energy by the National Governmen
agency, authority, instrumentality, officer
employee acting as such in the course of
duty, but is expressly prohibited from t
action. In brief, under Part II this Com
an agency of the National Government, is
ized to supervise or accomplish by indi
limitation of the freedom of action of th
Government or any of its agencies or age
chase electric energy at whatever price ca
tiated in direct negotiations. Although
the Department of the Navy requests th
sion so to act, it must be remembered tha
diction of this Commission rests upon ex

Department of the Navy or any other depart-
agency or agent of the National Government
han Congress as expressed by a duly enacted
."

er support of the position herein, reference
le to the company's opening brief, pages 63, 64.

Part I applies to the licensed portion of the energy Part II applies to the non-licensed portion.

o the licensed portion, the same arguments
deral Power Commission jurisdiction apply
set forth in II. A. above.

the non-licensed portion, the same arguments
deral Power Commission jurisdiction apply
set forth in II. B. above.

going propositions are self-explanatory. How-
inted out in I. C. above, we do not agree with
assumption herein and contend that Part I
construed to apply to both the licensed and
l portions of the energy sold by the "licensee"
Electric Power Company.

POINT III. SALES TO MINERAL COUNTY.

THE FEDERAL POWER ACT DOES NOT GIV
ERAL POWER COMMISSION JURISDICTION
SALES TO MINERAL COUNTY, WHETHER PAR
20, APPLIES, COVERING BOTH THE LICENSE
LICENSED PORTION OF THE ENERGY SOLD,
SECTION 201(b), APPLIES, COVERING BOTH TH
AND NON-LICENSED PORTIONS, OR PART I
THE LICENSED PORTION AND PART II APPI
NON-LICENSED PORTION OF THE ENERGY SC

A. **Assume only Part I applies, extending to the n
well as the licensed portion of the energy. I
Mineral County be found to be in interstate c
requirements of Section 20 for precluding F
Commission jurisdiction are met, because: (
directly concerned, viz., California and Neva
vided commissions with authority to enforce
ments of Section 20 within their respective st
such states have not been shown to be unabl
the rates prescribed by the California Commis**

In Point I above, it was demonstrated tha
the Act is, indeed, the applicable part, provi
ditions of Section 20 thereof are met. Suc
were previously set out in Point II. A, on pa
in discussing the sales to the Navy, and it
determine whether they are met in the sales
County.

First, have the states "directly concerned"
commission or other authority to enforce the r
of Section 20 "within such state"? The answe
yes, as the following discussion will demonst

California and Nevada are admittedly the

ia. Nevada's direct concern arises from the
e purchaser is a political subdivision of that
at such purchaser is engaged in public service
ie electricity, purchased in California, to citi-
sidents of Nevada.

has a regulatory commission, the California
ities Commission, which has broad powers
tes, wholesale and retail, of electric utilities
vithin the state. California Public Utilities
tes 1951, chapter 764, Section 201, et seq., as

Nevada Public Service Commission does not
great control over Mineral County as it does
e organizations engaged in public service in
nevertheless has express jurisdiction over
unty's rates. It should be noted in passing
l County in its electric operations is desig-
ral County Power System. Nevada Statutes
vide at page 55:

.6. The maintenance and operation of said
County Power System shall be under the
supervision and authority of the board of
rs and rates charged to consumers for sale
tribution of electric energy and current, and
s from telephone service, with the terms and
ns thereof, shall be fixed by said board, *sub-*
upervision of the Nevada Public Service Com-
, who may revise, raise or lower the same."
isis added.)

the requirements of this section [Section 20] v
State." The California Commission has juri
prescribe reasonable rates, wholesale or ret
charged by public utilities operating within
The Nevada Commission has jurisdiction to
reasonable rates to be charged by Mineral
selling to citizens and residents of Nevada.
commission has "authority to enforce the re
of this section [Section 20] within such state
respective state.

The staff of the Federal Power Commissio
parently unaware of the Nevada statutory
quoted above prior to the hearing and one c
wondering whether the order to show cause
been issued if the Nevada law had been fully
any event, staff counsel attempted at the hear
offer of extraordinarily incompetent evidenc
that the Nevada Public Service Commission di
jurisdiction over the rates of Mineral Cou
System.

Such counsel now seem tacitly to admit th
dence was, indeed, incompetent and that t
Public Service Commission *has,* pursuant to th
provisions quoted, jurisdiction over the rates
Mineral County Power System. (Brief of Res
39.) They now come up with the propositio
Nevada Public Service Commission does not qu
Section 20 because it is not constituted "wit

, p. 38.) Certainly, that is a requirement which
e statute, and the only basis for espousing it
isconstruction of the second condition of Sec-
vhich counsel apparently indulge. We turn to
tion of that second condition.

d in the following language in Section 20:

ch States are unable to agree through their
y constituted authorities on the . . . rates or
. . .”

wer Commission counsel contend that this
ntemplates an obligation on the part of the
tly concerned affirmatively to agree, in this
h their utilities commissions, on the fairness
esale rates. Going back to the first condition,
tend that the utilities commissions, to qualify
on 20, must have express authority from their
tates to enter into such affirmative agreement.

struction of Section 20 errs in two respects:
ding into the first condition the requirement
ate commissions, to be qualified, must have
gree affirmatively respecting wholesale rates
other state, whereas all the statute says is
te commission must have authority to fix rea-
es "within such state," and (2) by imposing
ve duty on the sister state to agree on the
ate approved by the other, whereas the statute
the other way around by saying that the Fed-

to agree in order to preserve local jurisdictior state's mere *failure to disagree* precludes Fec Commission jurisdiction.

Even counsel for the Federal Power Comn gest the Third Circuit may have gone afield in that Section 20 envisages affirmative agreem the compact clause of the Constitution (Art. Ch. 3). *First Safe Harbor Case,* p. 21, supra Respondent, p. 35.) Counsel say an affirma ment is contemplated, though they question v under the compact clause. We contend that nc agreement of any kind is contemplated by the only an absence of disagreement, to preserve diction.

To summarize, it is submitted that, if the pla of Section 20 is to be respected, the conditior in Section 20 which *preclude* Federal Power jurisdiction are as follows:

(1) The existence of state commissions ir directly concerned with authority t reasonable rates for electric utility se their respective states. No further is required. And:

(2) The absence of disagreement betweer directly concerned. After a wholes interstate commerce by a licensee has mined by one state, mere silence on

r it sees fit merely by voicing disagreement
ough any properly constituted authority, in-
ling the legislature itself.

pretation not only follows the natural mean-
language of Section 20 but implements the
ongress to make Federal Power Commission
applicable only where one or the other of
lirectly concerned believes that its interests
opardized.

icts there can be no question that the staff
eral Power Commission failed to show an
disagreement. No evidence whatever was
ecting any course of dealing, or an absence
veen the California and Nevada commissions,
any other authorities of the respective states.
an of the Nevada Public Service Commission
e concurrent hearing that his Commission had
not to participate in the cooperative proced-
; he would appear only as an interested party.
stated (Tr., p. 153):

State of Nevada, therefore, is not interested
to the extent that the users are living in Ne-
d, therefore, I will say that we are very much
ed. I am not prepared to state at this time
e position of our Commission would be, until
iis matter of jurisdiction has been decided.
all the statement I wish to make."

B. Assume Part II applies, extending to the licens the non-licensed portion of the energy. If the eral County be found to be in interstate comm exempt from regulation under Part II for reasons in addition to that given in Point I he

1. The sales to Mineral County are not sal sale as required by Section 201(b) because t sales to a "person" as specified in Section 20 defined in Section 3(4).

Reference may here be made to the corres cussion in Point II. B. 2, supra, pages 29-31, the sales to the Navy. It was there point counsel for the Federal Power Commission the literal meaning of the statute is to be igno to exempt sales to a municipality from regul mean that "Congress intended to deprive served by the thousands of municipally own tion systems, of the protection it was pro unjust and unreasonable interstate rates." T has no merit. It ignores the distinction betw and governmental bodies; it presupposes th governed by the same motives. Utilities are to make money, and if they agree to mak purchases at an improvident rate, they pass to the retail consumers. Municipalities or ot subdivisions of a state are not in business to but only to serve their consumers. The same d provident wholesale rates does not exist. T Congress in enacting Part II was to protec

l protector, and their consumers are amply
those municipalities.

urprising to find that Congress by its express
led from Federal Power Commission jurisdic-
Part II, sales to a political subdivision of a
II was enacted to close the gap of non-regula-
ıg wholesale transactions between one private
ınother, not between a private utility, on the
nd the state or a political subdivision there-
her.

n 201(f) provides that Part II shall not
olitical subdivision of a state. Such language
trued to exempt sales to Mineral County from
ınder Part II.

reasoning applies here which was set forth
B. 3. above relating to sales to the Navy.

**Part I applies to the licensed portion of the energy
Part II applies to the non-licensed portion.**

the licensed portion, the same arguments
leral Power Commission jurisdiction apply
et forth in III. A. above.

the non-licensed portion, the same arguments
leral Power Commission jurisdiction apply
et forth in III. B. above.

oing propositions are self-explanatory. How-
nted out in I. C. above, we do not agree with
ssumption herein and contend that Part I

CONCLUSION.

For all of the above reasons, it is submitt
Federal Power Commission has erred in asse
diction. The challenged order should be set as

Dated, San Francisco, California,
March 28, 1952.

Respectfully submitted,
EVERETT C. MCKEAGI
BORIS H. LAKUSTA,
WILSON E. CLINE,
Attorneys for Public Utilities
of the State of California
Curiae.

(Appendix A Follows.)

Appendix A.

50 Cal. P. U. C. 727-770

Decisions

of the

fornia Public Utilities Commission

Page

ssoc. Telephone Co., rate increase ---------- 727
5912 ---------- 747
alif. Elect. Power Co., interstate rates ---------- 749
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alif. Water Service Co., increase rates ---------- 763

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(June 29, 1951)

ione Company, Ltd., granted an estimated annual gross increase in 750,000 to produce an estimated rate of return of 6.1% during the riod after the effective date of the order.

AND TELEGRAPH UTILITIES—CONSTRUCTION AND OPERATION OF FACILITIES—COMMISSION JURISDICTION. A program of curtailing of new telephone plant, as an anti-inflation measure would not ublic approval in a state that is expanding and growing as rapidly as of California.

ND TELEGRAPH UTILITIES—RATE BASE—VALUATION—PARTICULAR –LAND AND BUILDINGS. The inclusion of interest on land is con- the established practice of charging overhead costs to plant charges construction period. Prior to the structural capital expenditures, of the associated land is required and necessitates capital investment des interest on the funds required prior to date of operation. This should be capitalized as an asset on the books of the company and determining costs for rate-making purposes.

AND TELEGRAPH UITLITIES — RETURN — SPECIFIC ALLOWANCE. should be given to the declining rate of return attendant upon the the investment in plant. Applicant's operating revenues should be an amount which will produce a return of 6.1% on an annual basis. ist applicant's outstanding securities and those proposed to be issued , such a return should produce net operating revenues sufficient to necessary capital and to enable applicant to proceed with its construc- n.

rances and list of witnesses are set forth in Appendix "1")

OPINION

Telephone Company, Ltd., a California corporation, his proceeding, by the above-entitled application, filed 50, asked authority to increase its telephone rates and annual amount of $3,241,200. On February 1, 1951, appli- rst amended application requesting that this amount be 5,757,600 by reason of changed conditions. The original s based upon conditions as they existed prior to June 25, of the incidence of the Korean war, which did not reflect ral tax rates, increased toll revenues, government restric- f copper, and increases in the rate of turnover among ployees. At the public hearing on April 5, 1951, applicant evidence Exhibit No. 46, which lowered the requested 545,000 after giving effect to an increase in toll revenue ,200 and an increase of $192,700 in miscellaneous revenue, on in the directory advertising revenue estimate.

of public hearings were held upon the first amended appli- Commissioner Huls and Examiner Edwards during Feb- April, and May, 1951. All hearings were held in Los t for one day, March 2, 1951, when the hearing was held

oral argument on May 9, 1951.

This rate increase proceeding is not the first for this
the beginning of the postwar inflation in wages and prices.
1949, by Decision No. 43423 in Application No. 30339, tl
granted this utility an interim increase in the amount of
annum. On May 2, 1950, by Decision No. 44135 under the
tion number, an additional increase of $2,200,000 in gros
granted. It was estimated that the utility would earn 5.9
base of $70,035,000 for a full year at the 1950 level of busin
claims that in 1950 it earned only 4.45% and did not rea
the Commission had estimated for the full year because
were effective for only seven months of 1950 and becaus
vening wage increase of $195,600 annually. The comp
return computed by the Commission's staff for the actual
4.97%. Applicant now claims that its rate of return is a
and that for the full year of 1951 it will fall to approximat

The Associated Telephone Company, Ltd., is engaged
of furnishing public utility telephone service to approxi
telephone stations in 34 exchanges located in the Counties c
Orange, San Bernardino, Santa Barbara, Ventura, Tula
Fresno. All but three of the company's exchanges have b
to dial operation. The area in which applicant renders tel
has witnessed a phenomenal postwar growth in populatio
of stations served by this utility has grown from 215,939 a
31, 1946, to 422,834 as of December 31, 1950. Accompany
increase in the number of stations has been an even shar
the amount of plant in service from $33,093,340 to $90,30
mand for new service continues unabated as indicated b
as of January 20, 1951, applicant's held orders were 21,9
New home construction in its service area has continued t
defense restrictions on certain types of new buildings.

Company's Position

Because of the fact that it has been necessary for ap
to increase its plant at high unit costs for labor and mat
to prewar prices, applicant claims it will not be possible
ficient rate of return at present rate levels to enable it to s
adequate prices for financing plant expansion. Further
operating expenses have increased out of proportion to r

ss construction in the amount of $25,914,100, which will
rage investment in 1951 to an approximate figure of $228
verage total operating expenses, including depreciation and
ion have risen from $44.26 in 1946 to $45.83 in 1950, and to
total of $48.82 in 1951. The average total operating rev-
ion have increased from $51.39 in 1946 to $53.25 in 1950,
are estimated at $55.11 at present rate levels.

t requests that its telephone service rates be raised to a
l result in a rate of return of 6.5% on its rate base at the
business. Its proposed increase of $5,545,000, largely pro-
signed to the local service classification, represents a rate
3% on the average, being equivalent to an approximate in-
per year per average station. The amount of increase in
osed by applicant, is not uniform for classes and grades of
hanges. Applicant suggests that the exchanges be classified
ps for local service and two groups for extended service
ons accessible to subscribers in an exchange, as shown on
table:

APPLICANT'S PROPOSED BASIC RATES

	Business Service			*Residence Service*		
le s	*Indiv. Line*	*2-Party Line*	*4 Party Line*	*Indiv. Line*	*2-Party Line*	*4-Party Line*
		Local Service				
500	$6.75	$4.25	$4.00	$6.00	$4.00	$3.75
,000	7.00	4.50	4.25	6.00	4.25	3.75
,000	7.25	4.75	4.50	6.00	4.50	3.75
,000	7.50	5.00	4.75	6.00	4.75	3.75
,000	7.75	5.50	--	6.00	5.00	3.75
		Extended Service				
,000	8.50	6.25	6.00	6.50	5.35	4.00
000	10.50	7.50	7.25	6.50	5.35	4.00

t's proposed rates are fully set forth in Exhibit E of the
d, in addition to the above schedules, contain proposals on
, suburban, and message unit services.

esentation

r representatives were present at each of the hearings and
ted testimony relative to various phases of the case pre-
applicant. Testimony or statements were presented by the
ninent public officials: State Senator Cunningham of San
ounty, Supervisor Marion A. Smith of Santa Barbara

install high cost buildings during the present period of hi
material prices; steps should be taken by the company to
eral nationwide inflation in prices and wages; applicant's p
would result in removal of telephones; telephone service an
be comparable with those applicable to other similar area

The applicant's position relative to these matters was:
exchanges fluctuates annually and it cannot be said fairly
exchange is carrying the others, and particularly in Oxn
proposed rates will justify the capital involved; buildings
for show or to have excess spare room but rather, adequatel
necessary telephone equipment; the dial switching equi
mendously more expensive than the buildings and undue r
taken where fire hazard is high and humidity, which mi
affect service, cannot be controlled.

The utility is the victim of inflation as is the public
generally. Applicant's prices must be kept current if it is
type of service the public is demanding. The only contrib
company stated it could make to halt the inflation spiral wo
construction of all telephone plant and not provide new ser
demanding it.

[1] We are of the opinion that such a program of c
struction of new telephone plant, as an anti-inflation meas
meet with public approval in a state that is expanding an
rapidly as is the State of California.

In addition to the testimony of the public officials, t
presented by representatives of other organizations and cit
mission also received a number of letters protesting the pro
in rates. These letters were summarized and classified as to
under several general headings by a Commission staff engi
sented as part of a service investigating report, Exhibit No
subjects were covered by such letters and by subscriber re
that it is not practicable to list herein the detailed consid
to each subject other than in a general way. The represen
California Farm Bureau Federation testified that service
area has been improving rapidly and that the farmer is w
the rates which the Commission finds are proper. However
out that the rate for business suburban service is too low
residence service based on the relative usage. Suburban b
are generally located along a highway where the public

eview of the letters received by the Commission, the utility
d to investigate and follow up any complaints regarding
the subscribers had given sufficient specific facts to indicate
the trouble. The company observed generally that most of
dicated dissatisfaction because of overloaded central office
his condition in large part now has been corrected. Another
e of complaint is the provision of party lines service to per-
requested individual line service. Solution of this problem
the utility's ability to raise capital and install additional
Certain subscribers had individual difficulties which the
equested to correct. Other letters advanced carefully pre-
tions which the Commission will attempt to carry out in
acticable.

mony of several subscriber representatives contained sug-
ive to the improvement of service conditions. Such testi-
weighed with all the evidence presented in this case, and
consistent with the economics governing the rendition of
vice, such suggestions will be adopted.

arnings

applicant and the Commission's staff presented estimates
gs of the Associated Telephone Company for the year 1951.
es, which are summarized in the succeeding table, show
result if the present rates were to be effective for the full
at would result if the proposed rates were effective for the
ear as indicated.

ESTIMATED EARNINGS IN 1951

	Company Exhibit No. 46		*Staff Exhibit No. 50*	
	Present Rates Full Year	*Pres. Rates First 4 Mos. Pro. Rates Last 8 Mos.*	*Present Rates Full Year*	*Pres. Rates First 6 Mos. Pro. Rates Last 6 Mos.*
nues ____	$24,265,400	$27,979,800	$24,642,000	$27,454,000
nses ____	13,074,700	13,074,700	13,069,500	13,026,500
________	3,892,200	3,892,200	3,850,000	3,850,000
________	4,431,300	6,281,100	4,473,900	5,895,400
enses ___	21,398,200	23,248,000	21,393,400	22,771,900
________	2,867,200	4,731,800	3,248,600	4,682,100
preciated)	86,615,564	86,615,564	82,148,000	82,148,000
________	3.31%	5.46%	3.95%	5.70%

on to the above figures, each exhibit contained a hypothetical
re for the year of 1951, assuming applicant's proposed rates

of the rate base. The staff's estimate of revenue for the
present rates is approximately 2% greater than the compa
penses less by .02% and the rate base approximately 5% sm
basis of part of the year at present rates and part at pro
the staff's estimates of revenue and expenses are approxima
than the company's, being accounted for by the fact that th
estimates reflected two additional months at proposed rate
did the staff's.

The company took no particular exception to the staf
of revenues and expenses but did develop on cross-examina
that the salary increase of $200,000 conditionally grantec
employees of the company effective May 1, 1951 would lo
of return by about 0.1% below that shown in the staff's e
company conditioned this salary increase on authorizatic
tained from the National Wage Stabilization Board. An
pointed out by the company that might also adversely affe
ings would be a possible future increase in wages. The uni
the bargaining agent for the company's wage-earning emplo
the company with 60 days' written notice on May 1, 1951,
to amend the contract currently in force. Such possible ar
not reflected herein. For the purposes of this decision, the
mates of revenues and expenses will be adopted, after adj
the expense effect of the $200,000 salary increase.

Applicant claims that its salary levels prior to incre
May 1, 1951 were below the salary levels paid by other pu
in Southern California. On the other hand, it claims that
a proper level since the wage earners are, and for severa
have been, compensated on the same general level as simila
elsewhere in the telephone business in Southern California.
representative testified that in these times of rapid growth
and plant and of increasing manpower problems, its succ
taining efficient and economical operations is in a larger
ever dependent upon the enthusiastic loyalty of salaried pe

Depreciation

The depreciation expense allowance by the staff was w
the company's estimate. The reason for the close agreement
company used the rates based on the lives recommended by
the prior rate proceedings under Application No. 30339. T

and salvage factors on its telephone plant. As a result cant's president reported on March 8, 1951, that the com- blished a Valuation Division which is now engaged in rtality statistics for the express purpose of computing epreciation expense and determining the adequacy of its eserve. In future years the company plans to spread the undepreciated cost of the plant less estimated net salvage ning life of the plant. Furthermore, no adjustment in the present reserve will be sought. Applicant's studies are advanced to determine depreciation allowances at this ining life basis.

tal taxes in the amount of $3,610,847 recorded in 1950, County taxes amounted to $52.5%, State taxes, 9.2% and 38.3%. In addition to these taxes, the company collected ne federal government $5,556,233 collected from its sub- senting federal excise taxes levied on exchange and toll he total taxes payable to all taxing authorities amounted verage station per month during 1950.

estimates of taxes are substantially above the $3,610,847 ld be higher still under the assumption that the proposed were to be effective only for part of the year. The reason increase is due to the effect of the current federal income rger net revenue. In 1950, on large utility corporations, eral income tax rate of 42% was effective which for 1951 47%.

company and Commission staff witnesses introduced ing rate bases for various periods. The differences in for the estimated year 1951 are due, in general, to the s:

nates of plant additions for the year are in the main spread e company uniformly throughout the year whereas the used two months actual and estimated completion dates he balance of the year in the weighting given capital ions.

staff figures reflect interest on land during the construc- period, while the company's procedure was to include in

tion of $69,000 in the weighted average rate base.
sion of interest on land is consistent with the est
tice of charging overhead costs to plant charg
construction period. Prior to the structural ca
tures, acquisition of the associated land is require
tates capital investment which includes interest
required prior to date of operation. This interes
be capitalized as an asset on the books of the
included in determining costs for rate-making

(c) The allowances for non-interest-bearing constru
progress differed materially due to differences i
approach. The applicant, in preparing its figure
1950 "Recorded", based the interest-bearing p
estimate of the monthly charges of interest durin
and deducted this from the total construction wo
to give the non-interest-bearing portion. This w
base for their estimates for 1951. The staff base
for the year 1951 upon a study of the actual
bearing construction work in progress experienc
addition, the company's interest during constru
culated at a 6% rate as against a 5% rate adopte

(d) The record shows the justification for the inclusi
mately $420,000 reflecting routine project expend
year 1951, which did not appear specifically in t
mate.

COMPARISON OF RATE BASES
1951 ESTIMATED *

	Company Exhibit II	*Sta Exhib No.*
Plant		
Telephone Plant	$99,331,000	$98,167
Non-interest-bearing CWIP	3,731,000	585
Property Held for Future Use	51,000	70
Total Weighted Average Plant	103,113,000	98,822
Adjustments		
Contributions of Tel. Plant	(893,000)	(897
Intangibles	--------	(49
Recomputation of Int. at 5% on CWIP and Land	--------	(19
Total Weighted Avg. Adjustments	(893,000)	(965
Working Capital		
Material and Supplies	3,304,000	3,278,
Working Cash	750,000	750,
Total Working Capital	4,054,000	4,028
Total Weighted Average Rate Base	106,274,000	101,885,
Deduction for Depreciation	19,658,000	19,737,

method of handling the above items, with the addition
noted, will be accepted for the purpose of this decision
ce will be made for routine projects. For the purpose of
for the estimated year 1951 an average weighted depre-
of $82,500,000 is adopted.

s request for increased rates is predicated, among other
uested return of approximately 6.5% on an average rate
r 1951 of $86,615,564. Counsel for the City of Los Angeles
return of 5.25% using a smaller rate base, while a wit-
on behalf of a group of cities which are served by appli-
t in his opinion the rate should not exceed 5.5%.
contains testimony and exhibits setting forth applicant's
ence, its method of financing its properties and its earn-
nds, as well as information including trends of interest
outstanding securities of other utility and industrial
ings on invested capital, and the trends of such earnings
ed utility companies, comparative risk data so far as the
stry and the electric industry are concerned, and esti-
requirements to service applicant's outstanding and
of stock and bonds. A witness called on behalf of appli-
hat in his opinion net income of $5,992,241 would be
vide the coverage of interest and dividends necessary
onal sales of preferred stock, to produce earnings of $2.90
common stock and, generally, to maintain applicant's
ss for the City of Los Angeles estimated that the com-
quire net earnings of $4,985,567 in order to service the
urities and those proposed to be issued, including in his
ever, an assumed dividend rate of 6.5% on the common
vitness presented financial statements and data pertain-
f money and, using an assumed capital structure includ-
6, concluded that a return of 5.5% would enable appli-
% dividend and to carry additional sums to surplus.
applicant's practice, in financing the cost of its prop-
and sell bonds and preferred stock to the public and to
s shares of common stock, at par, to General Telephone
t present, its capital structure consists of 54% bonds,
stock, and 24% equity capital. Applicant is of the opin-

the later part of the year. These issues were authoriz
1951 by Decision No. 45846 in Applications Nos. 32412 an
cant's program, if fully consummated, would result in
capital of approximately 50% for bonds, 24% for prefe
26% for common stock.

It is evident that applicant will continue to be face
tial new capital expenditures into 1952.[1] These plant
under today's inflated costs of labor and material, re
revenues to provide a fair return. Furthermore, the ta
creases, imposed or permitted with the approval of the
ment, must be reflected in rate increases if the utility is
rate of return.

In considering the record in this proceeding, it clear
applicant will have need for additional revenues if, unde
and tax levels, it is to enjoy a fair return on its invest
proceed with the financing of required extensions and
properties. We are of the opinion that recognition shou
the declining rate of return attendant upon the increas
ment in plant, and, after a full review of the matter w
applicant's operating revenues should be increased by
$4,750,000 on an annual basis, which, under present wag
in our opinion, will produce a return of 6.1% during the
period, based on the projection of the average year 1951 es
of operation. Tested against applicant's outstanding secu
proposed to be issued during 1951, it appears that such
produce net operating revenues sufficient to attract the n
and to enable applicant to proceed with its construction

In our opinion, based upon the record in this matter,
authorized are justified and the return to applicant on it
fair and reasonable.

Authorized Rates

In spreading the increases in rates, we have attempt
a balance as between districts and exchanges taking int
sizes and any peculiar conditions of the territory that n
cost of providing service. Rate levels and differentials as
of service on other systems serving somewhat compar
have been considered. The contentions of the subscribers
resentatives are also reflected in the rate levels in so fa
with the economic problems involved.

ontained in Exhibit No. 17 is incompetent and immaterial
ı this proceeding. However, it is evident that an indication
earning positions of the exchanges by geographical areas
d from the exhibit, and the rates have been fixed in accord-
principle that the charges for telephone service in one area
an undue burden on the balance of the company's cus-

ıe Los Angeles extended area, the rates of return indicated
). 17 in the Long Beach and West Los Angeles exchanges
above average and justify rates generally below the com-
sal. In the Santa Monica exchange and the remainder of
area exchanges, the returns were below average but not
ur opinion to warrant rate differentials after reflecting
ıe other items that make up cost of service. Under the cir-
ıe reasonable solution at this time is to provide a uniform
tes for extended service.

rison of the present rates for the two basic grades of ex-
e, namely: four-party residence service and one-party
ce, with the rates proposed by applicant and those author-
er herein, follows:

DED SERVICE—MONTHLY FLAT RATE—HAND SET STATION

	Four-Party Res. Service			*One-Party Bus. Service*		
	Present	*Proposed*	*Auth.*	*Present*	*Proposed*	*Auth.*
___________	$2.60	$4.00	$3.75	$9.25	$10.50	$10.50
___________	2.75	4.00	3.75	9.25	10.50	10.00
___________	2.75	4.00	3.75	9.25	10.50	10.50
___________	2.60	4.00	3.75	9.25	10.50	10.50
___________	2.75	4.00	3.75	7.50	8.50	10.50
___________	2.75	4.00	3.75	7.50	8.50	10.50
___________	2.75	4.00	3.75	7.50	8.50	10.50
___________	2.60	4.00	3.75	7.50	8.50	10.50

rized business rates are being placed at the level proposed
r higher, in order to maintain a proper balance as between
ades of service.

der, we are authorizing the discontinuance of local service
ned basis in all exchanges within the Los Angeles extended
the Long Beach exchange. Such discontinuance will result
available plant capacity through more efficient utilization
plant and equipment. Furthermore, improvement in serv-
tantial simplification in tariff schedules will result.

ision of extended service to all subscribers in the Los An-

customers is estimated as a net reduction of $434,000 on a
as compared to the total charges if local service were to be
the present basis.

Counsel for the City of Long Beach took exception t
of the company to make extended service effective for all
Long Beach. His position was that in Long Beach only so
stations are now on an extended service basis, that Long B
self-contained city with only 3.9% of its calls being toll cal
the large number of stations available the calling rate per
as high as in the smaller communities where only a few tho
are available, and that the geographical and economic con
cause any great demand on the part of the citizens of L
extended service.

We agree with counsel's position on this subject to t
the proposed discontinuance of existing local service in th
exchange will not be authorized at this time.

In connection with the change from local to extended
will be a certain period of time during which it will be nece
tain local service rates in the Santa Monica, West Los A
Downey, Malibu, Redondo, and Whittier exchanges. In the
and West Los Angeles exchanges, applicant stated that t
be made within 30 days after the effective date of this ord
the short interval of time until full extended service will be
the present level of local service rates will be continue
interval. For the remainder of the exchanges, which the c
to convert within 10 months, the local rates will be increas
authorized for the Long Beach exchange.

The company has as an objective of its long-term p
Angeles extended area exchanges the provision of all busi
a message rate basis. The provision of facilities for busi
line and private branch exchange message rate service
grammed for installation at the earliest feasible date in o
plish a more equitable distribution of charges in accorda
The possible discontinuance of flat rate business service
consideration when facilities are available to provide messa

A witness for the Cordingly-Sherman Apartment-H
the proposal to substitute hotel message rate private br
service at 5 cents per message for flat rate service. He c

the hotel is some $200 per month less under the message
n under a flat rate basis, and that the company never gave
e that the rates would not have to be changed in the future.
pinion, the proposal by the company to change hotel and
use private branch exchange service in West Los Angeles
m a flat to a message rate basis is sound. Under present
ng economic conditions, neither a utility nor this Commis-
rantee that rate levels and classifications can remain fixed
ded period of time. In our opinion, the message rate basis
for telephone service is a more equitable way of properly
cost of providing service to the small and large user.
licant has requested authorization to withdraw the offering
gn exchange service and substitute extended rates for the
w filed, where the serving exchange is in the Los Angeles
a. We believe that foreign exchange service, where the
nge is in the Los Angeles extended area, should be fur-
individual line extended service basis. Accordingly, the
exchange schedules will be authorized to be closed to new
d the company will be required to file individual line ex-
ess, residence or private branch exchange trunk service
tes where local service is now furnished. In connection with
iness and private branch exchange trunk service, we are
n that such service should be furnished on a message rate
order will so provide. Applicant has also requested increases
reign exchange mileage rates and the increase requested
rized.

h as the Commission is authorizing increases in rates for
, it follows that affected foreign exchange rates filed by con-
anies should be consistent. Therefore, such connecting com-
l request authority of this Commission to make the neces-
ings to reflect the increases authorized in the serving ex-
e order herein.

is not essential to equalize the return in each and every
have equalized as between the extended area exchanges
nd the outside exchanges as a group. One practical limit
applied in this leveling process is that no existing rates
ased more than 75%, except where the type of service
ng changed. Furthermore, consideration has been given to

service, namely, four-party residence service and one-pa
service, with the rates proposed by applicant and those a
the order herein, follows:

LOCAL SERVICE—MONTHLY FLAT RATE—HAND SET STATI

	Four-party Residential			One-par	
Exchange	Present	Proposed	Auth.	Present	Pro
Long Beach	$2.25	$None	$3.50	$7.50	$
San Bernardino	2.25	3.75	3.25	6.75	
Pomona	2.00	3.75	3.25	6.25	
Ontario	2.00	3.75	3.00	6.00	
Laguna Beach	2.00	3.75	3.00	5.75	
Huntington Beach	2.00	3.75	2.75	5.25	
Westminster	2.00	3.75	2.75	5.25	
Etiwanda	2.00	3.75	2.50	5.00	
Arrowhead	2.25	3.75	3.75	5.25	
Crestline	2.25	3.75	3.75	5.25	
Lancaster	2.25	3.75	3.75	5.25	
Santa Barbara	2.50	3.75	3.75	7.00	
Oxnard	2.50	3.75	3.75	6.00	
Santa Maria	2.50	3.75	3.75	6.00	
Carpinteria	2.50	3.75	3.25	5.50	
Lompoc	2.50	3.75	3.25	5.50	
Santa Paula	2.50	3.75	3.25	5.50	
Santa Ynez	2.50	3.75	3.25	5.50	
Guadalupe	2.50	3.75	3.00	5.25	
Los Alamos	2.50	3.75	3.00	5.25	
Thousand Oaks	2.50	3.75	3.00	5.25	
Fowler	2.50	3.75	3.25	5.50	
Lindsay	2.50	3.75	3.25	5.50	
Reedley	2.50	3.75	3.25	5.50	

A witness for the applicant testified that it is the co
eventually to offer, within the base rate areas, only individ
party line business service and that four-party line busine
the average is not a satisfactory grade of service for a bu
prise. In exchanges within the Los Angeles extended ar
has requested that four-party business extended service
only to those subscribers having four-party local service
of the conversion of an exchange to full extended service, a
only until facilities are available to provide a higher grad
service. We think this request is reasonable and that the gra
will tend to provide a more satisfactory service to custo
treatment also will be authorized in the exchanges locat
the Los Angeles extended area where four-party business
is furnished.

The increases proposed in the minimum charge per mo
public toll station service, in telegraph service rates, a

make such a change fully effective. In view of the fundamental... of such a change, the increase will not be authorized in ... However, new equipment purchased by applicant should be ...s to permit the placing into effect of a rate other than ...l messages, should the Commission hereafter find a change ...justified.

...icant proposes to establish a new exchange, to be desig... ...a exchange, which would include all of the present Zuma ...of the Malibu exchange and a portion of the Oxnard ex... ...wn on Exhibit A, Page 9, attached to the application. It ...hat facilities could be made available to establish such ... time during 1952. We are of the opinion that the removal ...district area as a part of the Los Angeles extended area ... desirable step to be taken at this time. The Zuma district ...ll rate center so that customers in the Zuma district area ...es based on their location relative to all other exchanges. ...ea is sparsely developed at present, it is included in the ...area for the Santa Monica and Canoga Park exchanges, ...nt service arrangements should be continued. Accordingly, ... establish the proposed Zuma exchange is denied.

...mission is of the opinion that further consideration should ...he introduction of extended service in the Carpinteria ... the view to providing such service on a two-way basis ... Barbara and Carpinteria. The order will provide for the ...ubmit a study covering traffic analysis, revenue, expense, ...ects of introducing such service, and to submit a similar ...g extended service between the Thousand Oaks, Oxnard, ...ula exchanges.

ORDER

...d Telephone Company, Ltd. having applied to this Com... ... order authorizing increases in rates, public hearings hav... ...and the matter having been submitted for decision,

...EREBY FOUND AS A FACT that the increases in rates ...authorized herein are justified and that present rates, in ... differ from those herein prescribed, are unjust and unrea... ...fore,

...EREBY ORDERED that

...ant is authorized to file in quadruplicate with this Com-

after July 21, 1951.

2. Applicant, within the exchanges herein specified, to cancel rates for local service, other than local for service, on or after July 21, 1951, but not later th 1, 1951 in the Santa Monica and West Los Ang and not later than June 1, 1952 in the Covina, Do Redondo, and Whittier exchanges.
3. Not later than April 1, 1952, applicant shall subm ering traffic analysis and revenue, expense and p introducing extended service, together with appl mendations thereon, between the Carpinteria and exchanges and between the Thousand Oaks, Oxna Paula exchanges. These studies, after being filed mission, shall be open to public inspection.

The effective date of this order shall be twenty (20) date hereof.

Dated at San Francisco, California, this 29th day of

MITTELSTAEDT, HULS, MITCHELL,
Commissioners Craeme being necessarily absen ticipate in the dispositi ceeding.

APPENDIX "1"

List of Appearances

Marshall K. Taylor, *Donald C. Power*, and O'Melveny & Meyers, by for applicant; *K. Charles Bean*, *T. M. Chubb*, and *Roger Arne* Los Angeles, interested party; *J. J. Deuel* and *Edson Abel*, for Bureau Federation, interested party; *Dewey L. Strickler*, *Joseph B. Lamb*, and *Henry E. Jordan*, for City of Long B *Edward Boehm* and *Frank Mankiewicz*, for Americans for D C.I.O., and Westwood Democratic Club, interested parties; City of San Bernardino, protestant; *David S. Licker*, for Barbara and for Cities of Pomona, Whittier, Redondo Bea Covina, Glendora, Oxnard, Laguna Beach, Santa Paula, Uplan Maria, Guadalupe, and Lompoc, protestants; *Angelo Iacobo Sheehan*, for Lakewood Chamber of Commerce, protestants; *Ma gomery* and *Henry T. Bailey* for City of Santa Barbara, prot *Sorenson* and *J. Leroy Irwin*, for City of Santa Monica, interes *M. Busch*, for Cities of Upland and Ontario, interested pa *Marion A. Smith* and *Robert B. Stillman* for County of San testant; *William Reppy*, for Cities of Oxnard and Port Huen *Donald Benton*, for the County of Ventura, protestant; *Rich* Lompoc Farm Center, protestant; *James C. Westerrelt*, for Farm Bureau, protestant; *Wilfred A. Rothschild*, for Thousa of Commerce, protestant; *Arden T. Jensen*, in propia persona,

List of Witnesses

as presented on behalf of applicant by Edwin M. Blakeslee (history, d results of operations), Marshall K. Taylor (number of employees), on (operating characteristics, station data), G. Howard Briggs (estiata), Dean M. Barnes (property for future use, ratio of materials 51 construction program, dial operation data, toll line data), Owen toll, and operator data), Guy T. Ellis (exchange operations, plant, rve, pay roll segregation), Evert E. Karlsson (depreciation, mainte- Frederick C. Rahdert (construction work in progress), Ralph K. history, tax data), Jonathan B. Lovelace (economic and financial rnings).

as submitted on behalf of the protestants and interested parties by , Frank A. Mankiewicz, T. M. Chubb, K. Charles Bean, Clarence A. E. Jordan, J. C. Westervelt, W. A. Rothschild, J. R. Henning, A. rman, R. M. Paaske, C. G. Smith, and G. A. Cordingly.

as submitted on behalf of the Commission's staff by Donald C. Neill rnings, general expenses, taxes), Theodore Stein (balance sheet, rve), Marshall J. Kimball (operating revenues, expenses), Greville se), and George W. Smith (service).

EXHIBIT A

Rates

tly effective rates, charges and conditions are changed only as rth in this exhibit.

os Angeles Extended Area

XTENDED SERVICE RATES—EACH PRIMARY STATION

	Residence Flat Rate Service Monthly Rate			*Business Service Monthly Rate*			
				*Msg.Rate**	*Flat Rate*		
	1-Party	*2-Party*	*4-Party*	*1-Party*	*1-Party*	*2-Party*	*4-Party*
-------	$5.50	$4.50	$3.75	$--	$10.50	$8.25	$--
.A.----	5.50	4.50	3.75	5.50 (80)	--	8.25	8.00
).A.---	5.50	4.50	3.75	--	10.50	8.25	8.00
------	5.50	4.50	3.75	--	10.50	2.25	8.00
------	5.50	4.50	3.75	--	10.50	8.25	--
------	5.50	4.50	3.75	--	10.50	8.25	8.00
------	7.00	5.55	4.50	--	12.00	9.30	8.75
.R.A.--	5.50	4.50	3.75	5.50 (80)	10.50	8.25	8.00
.R.A.--	7.50	5.90	4.75	7.50 (80)	12.50	9.65	9.00
s------	5.50	4.50	3.75	5.50 (80)	10.50	8.25	8.00
------	5.50	4.50	3.75	--	10.50	8.25	8.00

LOCAL SERVICE RATES—EACH PRIMARY STATION

	Residence Flat Rate Service Monthly Rate			*Business Flat Rate Service Monthly Rate*		
	1-Party	*2-Party*	*4-Party*	*1-Party*	*2-Party*	*4-Party*
------	$5.25	$4.25	$3.50	$8.50	$7.00	$--
------	5.25	--	3.50	8.50	7.00	6.75
------	5.25	--	3.50	8.50	7.00	--
------	5.25	--	3.50	8.50	7.00	--
------	5.25	4.25	3.50	8.50	7.00	6.75
------	6.75	5.30	4.25	10.00	8.05	7.50
------	5.25	--	3.50	8.50	7.00	6.75

ea.

Monthly Rate—Each Primary Station

Exchange	*Local* Residence	*Local* Business	*Suburban Line Extended* Residence	*Suburban Line Extended* Busin
Covina	$3.75	$6.00	$4.25	$7.2
Downey	--	6.00[a]	--	-
Long Beach	3.75	6.00	7.25	7.2
Malibu	3.75	6.00	7.25	7.2
Redondo[b]	3.75	6.00	7.25	7.2
Santa Monica[c]	3.25	5.00	7.25	7.2
Whittier	3.75	6.00	7.25	7.2

* Applicable to service furnished under Schedule No. A-1(a).
[a] Applicable only to services furnished on a deviation basis.
[b] Suburban area and special rate area.
[c] Furnished only within the Topanga Canyon area.

Extended Semipublic Coin Box Service

Exchange	*Ind* *Minimum* *Per L*
Santa Monica—Special Rate Area	$0.

Service in Santa Barbara and Ventura County Exchanges

Each Primary Station

Group	*Residence Flat Rate Service Monthly Rate* 1-Party	2-Party *	4-Party	*B R M* 1 Party
A	$4.50	$3.50	$3.00	$6.25
B	5.00	4.00	3.25	6.75
C	5.50	4.50	3.75	7.50
Special Rate Areas				
Oxnard (Camarillo)	7.50	--	4.75	9.50
Santa Maria (Orcutt)	7.50	--	4.75	9.50

Group	*Suburban Line Monthly Rate* Residence	Business	P
A	$3.50	$4.50	
B	3.75	4.75	
C	4.25	5.25	

* Not offered in Los Alamos, Santa Ynez and Thousand Oaks.
[a] Applicable only in Thousand Oaks.
[b] Applicable only in Oxnard-Hueneme base rate area.
[c] Also authorized for farmer line service in Gaviota and Las Cruces.

Rate Grouping

Exchange	Group	Exchange
Carpinteria	B	Santa Barbara
Guadalupe	A	Santa Maria
Lompoc	B	Santa Paula
Los Alamos	A	Santa Ynez
Oxnard	C	Thousand Oaks

Each Primary Station

	Residence Flat Rate Service Monthly Rate			Business Flat Rate Service Monthly Rate	
	1-Party	2-Party	4-Party	1-Party	2-Party
r, Reedley	$5.00	$4.00	$3.25	$6.75	$5.50
imore S. R. A.)	7.00	--	4.25	8.75	6.90

	Suburban Line Monthly Rate		Farmer Line Minimum Charge
	Residence	Business	Per Line Per Month
r, Reedley	$3.75	$4.75	$6.75[a]
imore S. R. A.)	3.75	4.75	6.75

l Rate Area
n Fowler.

Angeles, Orange and San Bernardino County Exchanges

Each Primary Station

	Residence Flat Rate Service Monthly Rate			Business Flat Rate Service Monthly Rate		
	1-Party	2-Party	4 Party	1-Party	2-Party	4-Party
	$4.00 *	--	$2.50 *	$5.50 *	$4.50 *	$4.25 *
	4.25	--	2.75	6.00	4.75	4.50
	5.50	$4.50[a]	3.75	8.50	6.50	6.25
	4.50	3.50[b]	3.00	6.50	5.25	--
	4.75	--	3.25	7.00	5.50	5.25[c]

	Suburban Line Monthly Rate		Farmer Line Minimum Charge
	Residence	Business	Per Line Per Month
	$3.00[d]	$4.25[d]	$8.00[e]
	3.25	4.50	--
	4.00	5.00	8.50[f]
	3.50	4.50	6.50[b]
	3.50	4.75	13.50[c]

y.
y.

—suburban residence, $3.75; suburban business, $5.00.
only.
y

Rate Grouping

	Group	Exchange	Group
	C	Lancaster	C
	C	Ontario	D
	A	Pomona	E
ach	B	San Bernardino	E
	D	Westminster	B
	A		

hanges Outside of the Los Angeles Extended Area

al condition, Schedule No. A-1, Individual and Party Line Service,

and conditions set forth in this schedule for business four-party line

Offered

FLAT RATE SERVICE—BASE RATE AREAS

Each trunk line: 150% of the individual line primary hand
rounded to the lower 25-cent multiple except in special rate areas.

FLAT RATE SERVICE—SPECIAL RATE AREAS

Each trunk line: Rate in base rate area plus the difference b
for business individual line flat rate service in the base rate area a
such service in the special rate area.

MESSAGE RATE SERVICE—DOWNEY, TOPAZ DISTRICT AR

Rate

First two trunks------------------------------------
Each additional trunk------------------------------------

Schedule No. A-7, Hotel Private Branch Exchange Service Santa Monica, West Los Angeles

EXTENDED SERVICE TRUNK RATE—MESSAGE RATE SERV

Rate

First two trunks------------------------------------
Each additional trunk------------------------------------

MESSAGE RATE

Each exchange message------------------------------------
Cancel rates for hotel private branch exchange flat rate extende
in the West Los Angeles exchange.

Schedule No. A-15, Supplemental Equipment All Exchanges Except Gaviota and Las Cruces

SERVICE MONITORING EQUIPMENT

Rearranging or changing connection of service monitoring equipment to subscribers' lines:
One line ------------------------------------
Two to 10 lines changed at the same time------------------
Cancel rates set forth in Rate Section B. Cancel Special Conditi

Schedule No. A-16, Multi-Residence Service—Redondo, Santa Mon

Rates for Multi-Residence Service are authorized to be cancelled

Schedule No. A-18, Vacation Rate Service

Revise Special Condition 5 to read:

No incoming or outgoing service will be furnished during the vac
the telephone numbers and facilities will remain available for restorati
at the end of the vacation period.

Add special condition to read:

Vacation rate service will not be furnished in connection with f
service.

Schedule No. A-19, Foreign Exchange Service All Listed Routes

Primary rates for foreign exchange local and extended service a
be made effective at a level consistent with the basic individual line,
PBX trunk rates effective in the foreign exchange as of July 21, 19
per month for business service and the first PBX trunk and 25 cent
residence service.

Add special condition to read:

The above rates for foreign exchange service comprehend a pr
the directories having primary distribution in the local and foreign ex

foreign exchange is outside the Los Angeles extended area.
l condition to read:
ınd conditions set forth in this schedule for residence two-party, four-rban local foreign exchange service beyond the first one-half mile to services established or applied for prior to July 21, 1951, furnished criber, either on the same premises or as moved to a different address scriber within the same local exchange. Additions to the service and service are permitted under this condition.

foreign exchange is within the Los Angeles extended area:
for extended foreign exchange individual line and PBX trunk service e offering of such service over routes where service is being furnished der the local foreign exchange tariffs as of July 21, 1951. For business rates, the basic rates from which the extended foreign exchange rates are as follows:

or District Area	Business Individual Line Message Rate
	$5.50 (80)
'orrey District Area	5.50 (80)
·h	5.50 (80)
	5.50 (80)

umber following a rate designates the message allowance under the rate quoted. The essage over the allowance is 5 cents.

l condition to read:
and conditions set forth in this schedule for local foreign exchange y to services established or applied for prior to July 21, 1951, furnished criber, either on the same premises or as moved to a different address scriber within the same local exchange. Additions to the service and service are permitted under this condition.

FOREIGN EXCHANGE MILEAGE RATES

mileage rates as set forth on Exhibit E attached to the first amended e 14, are authorized.

ence two-party foreign exchange mileage rate of $1.75 for each one-fraction thereof for service over listed routes between contiguous

-24, Receiving Cabinet Service

nges Except Gaviota; Lake Hughes and Las Cruces

rates set forth in Exhibit E, attached to the first amended application, thorized.

-2, Toll Station Service

rates set forth in Exhibit E, attached to the first amended application, uthorized.

-1, Telegraph Service

rates set forth in Exhibit E, attached to the first amended application, thorized.

I-1, Message Unit Service

rate of 5 cents per message unit in connection with Hotel PBX service s Angeles exchange is authorized.

---

03 (June 29, 1951). Niels Schultz (Millbrae Highlands Water Com-thorized to issue a promissory note.

---

09 (June 29, 1951). Acme Transportation, Inc., authorized to execute litional sales contracts.

D 45895, A 32407 (June 29, 1951). Southwest Gas Corporation, Ltd
issue $400,000, par value, of its First Mortgage Bonds, 4% Serie
1448 shares of common stock.

D 45896, A 32452 (June 29, 1951). Felton Water Company authori
16.3 acres of nonoperative property to the estate of George
deceased.

D 45897, A 32402 (June 29, 1951). Amends route 8, subparagraph
paragraph 2 of D 45840 Eastern Cities Transit, Inc., and exte
order. (1st Supp. Order).

D 45898, C 5308 (June 29, 1951). *Ione West* v. *Pacific Telephone
Company*. Interim restoration of service pending hearing.

D 45899, A 32498 (June 29, 1951). Louis M. Goodman (Goodman D
and Goodman Delivery Service, Inc., authorized to transfer hi
carrier and express operative rights to 20th Century Deliver

D 45900, A 32493 (June 29, 1951). Pine Flat Water Company aut
400 shares of $10 par value common stock.

D 45901, A 32080 (June 29, 1951). Willig Freight Lines allowed
time on D 45350, a securities order. (1st Supp. Order).

A 45902, A 32079 (June 29, 1951). E. J. Willig Truck Transport
allowed an extension of time on D 45351, a securities order. (1s

D 45903, A 31825 (June 29, 1951). John F. Neher and Mae Neh
Telephone Company) allowed an extension of time on D 44
Order).

D 45904, A 32527 (June 29, 1951). Western Pacific Railroad Com
to construct tracks at grade across Indiana and Tennessee Str
cisco.

D 45905, A 32499 (June 29, 1951). Southern Pacific Company au
struct a drill track at grade across LaFayette Street, Santa Cla

D 45906, A 32470 (June 29, 1951). City of Bakersfield authorized t
ginia Avenue at grade across a Southern Pacific Company tra

D 45907, A 32464 (June 29, 1951). City of Bakersfield authorized t
Street at grade across a Southern Pacific Company track.

D 45908 A 32440 (June 29, 1951). Southern Pacific Company autho
its non-agency station at Cuneo, Kings County.

D 45909, C 5297 (June 29, 1951). *John Ferro* v. *San Joaquin*
Defendant ordered to substitute one of complainant's parcels of
in its service area.

D 45910, A 32457 (June 29, 1951). Pacific Gas and Electric Compa
carry out the terms of an electric contract with Superior Con
Company, Inc.

D 45911, A 32182 (June 29, 1951). Beninger Transportation Servi
an in lieu certificate of public convenience and necessity as a
service between East Richmond Heights and Richmond extend

D 45912, A 31161 (June 29, 1951). Pacific Greyhound Lines authori
over 35 but less than 40 feet in length between San Francis

tric Power Company authorized to charge United States for power pur-
California and transported by the latter to its Naval Ammunition Depot
iorne, Nevada, the rates prescribed for such service by Decision No.
d authorized and directed to charge Mineral County Power System for
·chased in California and transported by the latter to Nevada for resale,
prescribed for such service by said Decision No. 41798.

UTILITIES—INTERSTATE COMMERCE—COMMISSION—GENERAL JURIS-
ND POWERS. Where the Navy pursuant to contract purchases electric
California from an electric utility, which energy is derived both from
nd non-licensed projects in California and is consumed by the Navy
a Naval reservation in Nevada by the Navy and its naval and civilian
, there is nothing either in the interstate commerce clause of the Fed-
titution or in the Federal Power Act to preclude the jurisdiction of
rnia Commission.

JTILITIES—COMMISSION—JURISDICTIONAL LIMITATIONS—INTERSTATE
E. A state cannot regulate the rates charged by a local electric utility
nt sold to a foreign electric utility for resale in another state and
at the state boundary, inasmuch as the interstate business carried on
he two utilities is essentially national in character, and state regula-
d constitute a direct burden upon interstate commerce, placing a direct
on that which, in the absence of federal regulation, should be free.
U.C. v. *Attleboro Steam and Electric Co.* (1927), 273 U. S. 83, 71
).

UTILITIES—INTERSTATE COMMERCE—COMMISSION—GENERAL JURIS-
ND POWERS. Even if it be assumed that the sales by California Elec-
Navy are in interstate commerce, regulation by the State of California
es for such sales does not fall within the proscription of the *Attleboroe*
Only one state, viz., California, is directly concerned, since no state
jurisdiction over the Navy, an arm of the federal government. Thus,
bsent that potential clash of respective state interests which underlay
usion in the *Attleboro* decision. Perhaps an even more conclusive cir-
e for the proposition that the interstate commerce clause does not
California jurisdiction is the fact that electric rates prescribed by the
ı Commission are not the rates which a utility must charge on arm
ited States Government. General Order No. 96 provides that an electric
ay furnish electric service "at free or reduced rates or under condi-
erwise departing from its filed tariff schedules to the United States
s departments." Thus, the federal government is in no way burdened
otiations with an electric utility by a California rate order.

UTILITIES—INTERSTATE COMMERCE—COMMISSION—GENERAL JURIS-
AND POWERS. Congress has conferred jurisdiction on the Federal
ommission under Section 20 of the Federal Power Act only if any of
s directly concerned has not provided a commission or other authority
e the requirements of Section 20 within such state ("requirements"
y referring to the provision that the rates and services by licensees
s purchasing from licensees for resale in public service shall be reason-
d furthermore, even though the requisite state commissions or other
es have been provided, only if the states directly concerned are unable
on the services or rates through their properly constituted authorities.
fornia Commission is the kind of state "commission or other authority"
ated by Section 20, for it has comprehensive power to regulate electric
tes and service "within such state," viz., California. California is the
e which can, because of its authority over California Electric, affect
to the Navy. Since only one state is 'directly concerned," no question
of inability as between two states directly concerned to agree on the

of electric energy to any person for resale."

[6] ELECTRIC UTILITIES—INTERSTATE COMMERCE—COMMISSION—G DICTION AND POWERS. Jurisdiction is denied the Federal Po over sales of electric energy for use by the Navy in Nevada by th of Sections 201(a) and 201(b) of Part II of the Federal Pov 201(a) declares that federal regulation shall "extend only t which are not subject to regulation by the States" and Sectio Part II applicable to "sales at wholesale in interstate comm intended the Federal Power Commission to have jurisdiction o where the United States Supreme Court had declared state regu could not be exercised because of the interstate commerce clau

[7] ELECTRIC UTILITIES—INTERSTATE COMMERCE—COMMISSION—G DICTION AND POWERS. The machinery set up in Section 20 o Federal Power Act, which allows state jurisdiction under ce when applied to sales of electric energy to Mineral County Po resale in Nevada, enables the California Commission to exer without interfering with the rights of Nevada and without im burden on interstate commerce. Part II does not apply because County Power System are not to a "person" as defined. Even construed to apply, the proviso clauses alluded to in Sections 201 of Part II operate to preserve the exercise of jurisdiction recog

[8] ELECTRIC UTILITIES—INTERSTATE COMMERCE—COMMISSION—G DICTION AND POWERS. In the case of the sales to Mineral Count (1) each of the states directly concerned, viz., California and N vided "a commission or other authority to enforce the requi section [Section 20 of Part I of the Federal Power Act] wit and (2) such states have not, through their properly constit been shown unable to agree on the rates for the sales in ques under said Section 20, jurisdiction over the sales rests in the mission.

Henry W. Coil, for applicant, California Electric Power Company; and *L. B. B. Lindstrom*, for Mineral County Power System *Hamilton Treadway*, and *F. W. Denniston*, for the United Stat *H. Lakusta*, for the Commission's staff.

OPINION

California Electric Power Company, by its first and s mental applications in this proceeding, seeks determinat the Commission's Decision No. 41798 of July 1, 1948, au tain rate increases, applies, respectively, to sales to the N of the Government's Naval Ammunition Depot, Hawth and to sales to Mineral County Power System for resale in Nevada. Applicant requests that such determinations b affirmative, thus making the utility's Schedule P-2 appl sales to the Navy and its Schedule P-3 applicable to the sa County Power System. Should the Commission construe not to apply, applicant seeks the establishment of appropr such sales.

Both supplemental applications refer to the matter o and the position is taken that jurisdiction lies in the Ca

r rates, are reasonable. A further hearing was scheduled
calendar when the Federal Power Commission evinced,
spondence, a desire to explore the question of jurisdiction.
ation thereof, on February 15, 1950, it issued an order to
gainst California Electric Power Company. On March 20
pursuant to mutual agreement between that Commission
ncurrent hearing was held which, in so far as this Commis-
erned, bore solely upon the jurisdictional question. It was
Commissioner Rowell that, if additional evidence should
visable at a later date, due notice would be given.

be stated at the outset that the Commission is now satis-
areful weighing of the record, that no further evidence is
sfactorily to dispose of the issues raised by the two supple-
cations. Accordingly, the order herein will include sub-

ric Power Company Operations.

a Electric Power Company renders public utility electric
itheastern California in parts of Mono, Inyo, Kern, San
Riverside, and Imperial counties. Its Nevada Division serves
and Esmeralda counties, Nevada. Fifty-five per cent of all
pplied by the company comes from its own generating
other forty-five per cent is obtained from Southern Cali-
Company, the Department of Water and Power of the
ngeles, and neighboring electric production agencies with
nia Electric maintains interconnections.

950, California Electric served an average of about 56,000
per cent of whom were in California. Residential and
omers purchased 11 per cent, rural customers, 15 per cent,
l commercial customers, 61 per cent, and other customers,
f California Electric's energy sales.

pany's production sources are interconnected with a net-
-voltage lines extending southerly from Mono County to
no about 300 miles along the easterly slope of the Sierra
tains, also extending throughout its main system around
no and Riverside, and easterly from Victorville some 200
er Dam Power Plant. In 1950, the maximum system demand
w.

customers, Mineral County Power System, with a demand

half the distance being in California and the other half in
ing periods of emergency trouble, these customers have ar
the more reliable Navy line jointly. California Electric adj
to conform to the disposition of deliveries upon advice
tomers. Mineral County Power System resells the energy i
its retail customers in Nevada. The Navy uses its deliv
mented by its own fuel generating plant, for the powe
requirements of its industrial activities and for the re
commercial needs of employees or personnel housed at the
ervation.

Construction of Decision No. 41798.

In Application No. 28791, California Electric soug
increase in rates. It proposed increases in all of its filed ta
in a number of special contract rates. It did not request
increase the rates contained in the then effective special co
cable to sales to the Navy and to Mineral County Power

For the rate proceeding, studies of the trend and p
of applicant's revenues and expenses were made by applic
interested parties, and by engineers of this Commission's
be seen from the exhibits in the proceeding, from the a
of applicant to this Commission, and from the testimony of
Engineer of this Commission, the revenues and expenses
with the sales to the Navy and Mineral County Power
included in the statistics upon which the earning studie
In Decision No. 41798, the Commission concluded that a
entitled to an increase in rates. In prescribing rates, it
spread the increase equitably among the several classes
in accordance with accepted practice. The Commission ind
satisfaction with special rate contracts and directed applic
tinue a substantial number of special rates. It prescribed
and P-3 for customers of the same type and kind as t
Mineral County Power System, respectively. It made th
plicable to all similar customers on the California system
City of San Bernardino. It further satisfied itself that t
deliveries to the Nevada system was at a level substantiall
to the wholesale power schedule. By establishing such ra
mission was satisfied that each customer would be requir
more than was necessary and that no customer would obt

a contract dated October 5, 1945, which specified a term of
The rates applicable to the Navy were set forth in a contract
the period July 1, 1943, to June 30, 1944, and thereafter
lays' written notice by either party.

es prescribed by Decision No. 41798 became effective August
letter dated July 30, 1948, California Electric notified the
termination of the July 1, 1943, contract, to be effective
1948. The contract with Mineral County Power System by
ns expired on October 4, 1948. Since no new contract rates
for either the Navy or Mineral County Power System, the
-2 and P-3, respectively, became applicable on October 1
5, 1948, respectively, unless Decision No. 41798 should be
ot to apply.

n No. 41798 does apply, as we construe it, to the sales to
d Mineral County Power System. It is true that the decision
er specifically to such sales, but there can be no doubt from
ensive language and general tenor, to say nothing of the
on which it is based, that it was intended to cover all sales
a Electric. The decision states:

s previously noted, a number of applicant's deliveries to large
rs are made under special contract agreements at rates other
ose contained in the filed tariffs. Under the request contained
pplication, the Commission is asked to authorize applicant to
fective certain changes in special contracts. Several of the ex-
ontracts under their present terms and conditions provide for
lication of any newly effective tariffs authorized. The remain-
tracts providing for deliveries at special rates either have ex-
r, within the next twelve months, will expire or may be
ted by applicant. Under these circumstances it appears un-
ry for the Commission to order at this time the termination
nsive modification of any existing special contracts."

n further states:

ariffs herein authorized are intended for application to all
sales by applicant to customers in California, excepting only
les to other distributing agencies with whom applicant has
ange agreements. . . . In any one area a single rate will apply
ervice to domestic customers; . . . a large block power rate
ovide for the major industrial and commercial deliveries;
d a resale power rate will apply to deliveries for resale
s."

d in the decision that the conditions surrounding the utility's

to the Navy and Mineral County Power System, we turn to
of jurisdiction.

Jurisdiction.

The question is presented whether California is pre
jurisdiction over the sales to the Navy and Mineral Co
System, either by virtue of the interstate commerce clause
its own force, or by enactment of the Federal Power Act (
49 Stats. 841, 16 USCA Sec. 791, et seq.). In arriving at th
that jurisdiction is not precluded, we have been substan
by the several briefs filed in connection with the concurr
We are not unmindful that the Federal Power Commission, i
No. 212 issued on April 13, 1951, asserted jurisdicition, C
Smith dissenting. It may be noted that the Federal Exami
pared an opinion stating that the Federal Power Commissi
out jurisdiction. Rehearing was denied on June 6, 1951.

We will consider separately the sales to the two custome

Sales to the Navy.

[1] The service to the Navy was begun, as indicated ab
pursuant to a contract for the sale of all energy required by
ment "for use of the Government's Naval Ammunition D
thorne, Nevada, except such electric energy as may be gene
government on said premises." The energy purchased by
consumed wholly on the Naval reservation which, in add
installations devoted directly to Naval use, includes the
Naval personnel described as "public quarters" and the "
Cost Housing Project" known as Babbitt, which provides liv
and facilities for those civilians connected directly or indire
Navy's activities on the reservation.

The evidence indicates that, while a large percentage o
furnished to the Navy is derived from licensed projects, the
when all or a portion of it comes from non-licensed sources.

As stated above, the energy is delivered by California E
Navy at Mill Creek and transmitted by the Navy over its
Nevada for consumption.

It is our opinion that upon such facts there is nothing
interstate commerce clause of the Federal Constitution or in
Power Act to preclude our jurisdiction.

] that a state cannot regulate the rates charged by a local
ty for current sold to a foreign electric utility for resale in
and delivered at the state boundary, inasmuch as the inter-
s carried on between the two utilities is essentially national
and state regulation would constitute a direct burden upon
mmerce, placing a direct restraint on that which, in the
deral regulation, should be free.

n if it be assumed that the sales by California Electric to
e in interstate commerce, regulation by the State of Cali-
rates for such sales does not fall within the proscription of
o decision. Only one state, viz., California, is directly con-
no state can have jurisdiction over the Navy, an arm of the
rnment. Nevada has no jurisdiction over the rates the Navy
ornia Electric, nor over the rates the Navy charges its per-
tenants. California's jurisdiction arises solely from its
er California Electric. Thus, there is absent that potential
ective state interests which underlay the conclusion in the
cision.

an even more conclusive circumstance for the proposition
rstate commerce clause does not preclude California juris-
fact that electric rates prescribed by our Commission are
which a utility must charge an arm of the United States
The Commission in 1942 issued General Order No. 96,
les in Section X-B, that an electric utility may furnish
ce "at free or reduced rates or under conditions otherwise
om its filed tariff schedules to the United States and to its
." (See Public Utilities Act, Section 17.) Thus, while the
tween charges under filed tariffs which have been found
nd the revenue actually received for service supplied to the
rnment, would have to be borne by California Electric rather
omers, the federal government is in no way burdened in its
with the utility by a California rate order.

vs that since a sister state is not deprived of anything to
ntitled and the federal government is in no way burdened,
ise of California jurisdiction, such jurisdiction does not
ndue burden upon interstate commerce and, therefore, does
he interstate commerce clause of the Federal Constitution.
d be noted in passing that the situation here presented is

electricity are in furtherance of its national defense obliga
undertaking to provide electric service to its personnel an
Hawthorne is merely incidental thereto.

Not only do we conclude that the interstate commerc
sents no barrier to the exercise of our jurisdiction over the
Navy, but we find nothing in the Federal Power Act takin
diction away. Such conclusion is reached even if it is a
Part I of the Act (setting forth the provisions applicable
from licensed projects is involved) and Part II (applying "
electric energy at wholesale in interstate commerce but . . .
any other sale") both apply or that either Part I or Part II
Safe Harbor Water Power Corp. v. *FPC* (CCA 3d, 1941), 1
cert. dnd. (1942), 316 U.S. 663, 86 L. ed. 1740; *Safe Harbor*
Corp. v. *FPC* (CA, 3d, 1949), 179 F. 2d 179, cert. dnd. (19
957, 94 L. ed. 1368.

Turning first to Part I (derived from the Federal Wat
(1920, ch. 285, 41 Stat. 1063)), if it be assumed that the
Navy are in interstate commerce, the applicable language
Section 20 providing, in so far as pertinent, that when:

> "said power or any part thereof [presumably any pov
> by a licensee] shall enter into interstate or foreign c
> rates . . . and the services . . . by any . . . license
> any person, corporation, or association purchasing pow
> licensee for sale and distribution or use in public se
> reasonable . . . to the customer . . .; and wheneve
> states directly concerned has not provided a commis
> authority to enforce the requirements of this section
> state . . . or such states are unable to agree through t
> constituted authorities on the services . . . or . . . ra
> isdiction is hereby conferred upon the [Federal] Com
> to regulate . . . so much of the services . . . and .
> therefor as constitute interstate or foreign commerce

[4] It will be observed that Congress has conferred ju
the Federal Power Commission under Section 20 only i
states directly concerned has not provided a commission or
ity to enforce the requirements of Section 20 within such sta
ments" apparently referring to the provision that the rates
by licensees or persons purchasing from licensees for res
service shall be reasonable), and furthermore, even thou
site state commissions or other authorities have been prov

.d of state "commission or other authority" contemplated
for it has comprehensive power to regulate electric utility
ice "within such state," viz., California. We have already
n considering the interstate commerce clause, that Cali-
ıly state which can, because of its authority over California
t the sales to the Navy. Nevada cannot order the Navy to
rate for electricity purchased, nor can it order the Navy
rtain rate for electricity distributed. It follows that, since
is "directly concerned," no question can arise of inability
o states directly concerned to agree on the reasonableness
charged to the Navy. Thus, Federal Power Commission
excluded because the two conditions to its exercise, as pre-
ngress in Section 20, are absent.

to Part II of the Federal Power Act (enacted as part of
ility Act of 1935, ch. 687, 49 Stat. 803), it is declared in
) that:

› provisions of this Part shall apply . . . to the sale of
nergy at wholesale in interstate commerce, but shall not
ıny other sale of electric energy . . ."

› this jurisdictional language, it is provided in the policy
Section 201(a) that federal regulation of the "sale of such
:gy at wholesale in interstate commerce is necessary in the
:, such federal regulation, however, to extend only to those
are not subject to regulation by the states."

.side the question whether the sales are in interstate com-
ır that [5] the sales to Navy do not fall within the language
ic energy at wholesale," which is defined by Section 201(d)
.le of electric energy to any person for resale." The sales
re neither sales to a "person" nor are they sales "for

"person" is defined by Section 3(4) of the Act to mean
.l or corporation." A "corporation" by Section 3(3):

.ny corporation, joint-stock company, partnership, associ-
siness trust, organized group of persons, whether incorpo-
not, or a receiver or receivers, trustee or trustees, of any
egoing. It shall not include 'municipalities' . . ."

hat the Navy is not a "person" as defined.

is the Navy not a "person" but the sales to it cannot prop-
bed as "sales for resale." We have already alluded to the

language. All of the energy is consumed on the Naval res
is used in the Depot's industrial operations or dissipa
losses; the balance is used by the individuals and business
located on the government reservation. Individuals may
duct business only so long as their presence is consistent w
obligations. The lease agreements with those occupying
ters'' and with those occupying the low-cost housing pro
Babbitt, both provide that the rental privilege ceases upo
of employment. For the business concessions, the govern
''Revocable Permit'' reciting that the concession is ''fo
tion of employees of the Depot.''

It follows that the sales to the Navy are in effect fo
It is true that, in supplying electricity to those living
business at the reservation, the Navy is in a sense ''rese
purchased from California Electric Power Company, b
that the term ''sale for resale'' in Part II of the Feder
was intended to refer to a very different situation. Th
repeatedly pointed out that Part II was enacted to clo
utility regulation revealed by the *Attleboro* decision. Se
tral Power & Light Co. v. *FPC* (1943), 319 U.S. 61, 8
63 S. Ct. 953. The Navy is certainly not a public utility. I
it would not be precluded from that status by virtue of
the federal government, it could not be deemed a public u
of furnishing electricity to tenants whose continued ten
upon the needs of the Navy landlord.

We are satisfied, in the light of the foregoing obse
the sales to the Navy are not to a ''person for resale''
of the Federal Power Act, but quite aside from that c
jurisdiction is denied the Federal Power Commission b
clauses of Sections 201(a) and 201(b) of Part II. Secti
clares that federal regulation shall ''extend only to those
are not subject to regulation by the States'' and Secti
making Part II applicable to ''sales at wholesale in i
merce'', contains the proviso that Part II ''shall not appl
sale of electric energy.'' Taking these sections together a
them in the light of their statutory history, it is plain
intended the Federal Power Commission to have jurisd
that area where the United States Supreme Court had
regulation over sales could not be exercised because of

machinery set up by Congress in Section 20 of Part I to upon certain conditions to exercise jurisdiction without terstate commerce is available upon the facts shown and ible for California to regulate the sales to the Navy. Thus, he Constitution and Part I of the Federal Power Act, ay exercise jurisdiction. Therefore, the provisos of Sec- and 201(b) in Part II operate to deny Federal Power urisdiction under Part II. It follows that there is nothing prevent the exercise of California jurisdiction over the ion, and we so conclude.

l County Power System.

ously noted, California Electric sells electric energy to ty Power System at Mill Creek, and the latter transmits er its own line to Nevada, reselling to local consumers in the case of the Navy, the evidence indicates that, while tage of the energy is derived from licensed projects, there n all or a portion of it comes from nonlicensed sources.

the propositions set forth above in support of our con- ve may properly exercise jurisdiction over the sales to the ith equal force to the sales to Mineral County Power Sys- r, there are certain differences which will be pointed out is which follows.

stated that independently of any consideration of federal interstate commerce clause does not operate to prevent om exercising jurisdiction over the sales to the Navy inas- lash between state interests can be involved and inasmuch l government is not burdened by the exercise of California A different situation exists with the sales to Mineral County n, for the State of Nevada clearly has an interest in the icity to Mineral County Power System and the rates in by it to its customers. [7] Turning to the Federal Power , we are satisfied that the machinery set up in Section 20 ich allows state jurisdiction under certain conditions, when e facts in issue enables this Commission to exercise juris- ut interfering with the rights of Nevada and without im- due burden on interstate commerce. We are further satis- t II does not apply because the sales to Mineral County n are not to a "person" as defined. We are further satis-

ditions must, by the terms of Section 20, be present before
concerned may exercise jurisdiction: (1) they must have
with authority to enforce the requirements of Section
state; (2) such states must not be unable to agree upon t
charged. [8] In the case of the sales to Mineral County P
(1) each of the states directly concerned, viz., California
has provided "a commission or other authority to enforce
ments of this section within such state," and (2) such st
through their properly constituted authorities, been sho
agree on the rates for the sales in question.

Considering the first of these propositions, it canno
contended that the California Commission, entrusted as i
broad regulatory authority over the rates and service of u
the state, fails to qualify as "a commission or other autho
the requirements of this section within such state." Whi
Public Service Commission does not exercise as great a deg
over the Mineral County Power System as it does over p
zations engaged in public service in Nevada, it neverthele
jurisdiction over Mineral County Power System's rates. Ne
of 1925 provide at page 55:

> "Sec. 16. The maintenance and operation of said M
> Power System shall be under the control, supervision
> of the board of managers, and rates charged to consu
> and distribution of electric energy and current, and
> telephone service, with the terms and conditions the
> fixed by said board, *subject to the supervision of the N*
> *Service Commission, who may revise, raise or lowe*
> (Emphasis added.)

The quotation makes clear that the Nevada Public Servic
is, with respect to Mineral County Power System's rates
sion or other authority to enforce the requirements of this
such state."

The Federal Power Commission, adopting the cont
counsel, has declared in its Opinion No. 212, above referr
order to qualify as "a commission or other authority t
requirements of this section within such state," a commiss
authority not only to regulate the rates charged by a u
rates such utility pays for power purchased outside the st
mitted in interstate commerce. It is claimed that the Ne
sion does not qualify because it is not empowered to fix the

ommissions with powers beyond those normally entrusted
vers which might indeed be found to be unconstitutional.
; to the second proposition, there was no evidence whatever
hat California and Nevada "through their properly con-
orities" were "unable to agree." No evidence whatever was
cting any course of dealing, or an absence thereof, between
a and Nevada commissions, or between any other authorities
ctive states. The Chairman of the Nevada Public Service
stated at the concurrent hearing that his Commission had
not to participate in the cooperative procedure and that
bear only as an interested party. He further stated:

tate of Nevada, therefore, is not interested except to the
hat the users are living in Nevada and, therefore, I will say
are very much interested. I am not prepared to state at
e what the position of our Commission would be, until after
ter of jurisdiction has been decided. That is all the state-
wish to make."

make apparent that there was no inability to agree, and
ada Commission has adopted a neutral position.

ws that, since neither of the circumstances prevail upon
ral Power Commission jurisdiction is conditioned under
jurisdiction properly may be exercised by this Commission
es to Mineral County Power System, at least until such
properly constituted authorities of California and Nevada
o agree on the rates to be charged for such sales.

ring next the effect of Part II upon our jurisdiction, we
discussing the sales to the Navy that that Part gives the
er Commission jurisdiction only over sales "to any person
The sales to Mineral County Power System undoubtedly
sale" but they are not sales to a "person." Section 3(4)
erson" as "an individual or corporation." A "corporation"
(3) "shall not include 'municipalities' as herein defined."
ality" by Section 3(7) means "a city, county, irrigation
inage district, or other political subdivision or agency of a
ent under the laws thereof to carry on the business of devel-
nitting, utilizing or distributing power . . ." Mineral County
m, as we understand it, is the operating name for the County
n its proprietary capacity as the seller of electric energy

to be regarded to be within the purview of Part II, the pro
of Sections 201(a) and 201(b) apply. Our views hereto
respecting them apply with equal force. Since by the p
Part I, Section 20, the California Commission upon the fa
ercise jurisdiction, the proviso clauses in Part II operate to
jurisdiction by denying it to the Federal Power Commission

In the light of the conclusion we have reached respect
struction properly to be placed upon our Decision No. 41798
clusion that we have jurisdiction over the sales both to th
to Mineral County Power System, we herewith order as foll

ORDER

The first and second supplemental applications of Califor
Power Company having been duly considered after hearing a
of briefs, and it appearing that no further hearing is neces
pose of any of the issues presented, and the Commission
it has jurisdiction in the premises,

IT IS HEREBY ORDERED that the matters upon
supplemental applications herein are submitted.

IT IS FURTHER ORDERED that California Electric
pany is hereby authorized to charge and collect from the Unit
electric service furnished at the Mill Creek hydroelectric
plant and transported by the United States to the United S
Ammunition Depot at Hawthorne, Nevada, the rates prescrib
service by Decision No. 41798, viz., the rates set forth in S
attached to such decision.

IT IS FURTHER ORDERED that California Ele
Company is hereby authorized and directed to charge and
Mineral County Power System for electric service furni
Mill Creek hydroelectric generating plant and transported
County Power System or the United States into Nevada fo
Mineral County Power System, the rates prescribed for s
by Decision No. 41798, viz., the rates set forth in Schedule I
to such decision.

IT IS FURTHER ORDERED that California Ele
Company take all reasonable steps to collect from Mineral Co
System the charges hereinabove referred to from the tim

ı increase in rates. One rate in D 45889 amended. (1st Supp. Order).

53 (July 3, 1951). Desert Express granted several extensions of its highway common carrier services including an extension of its s pickup-delivery area.

3 (July 3, 1951). Valley Transit Lines granted an in lieu certificate onvenience and necessity as a passenger stage service providing for ensions and reroutings.

(July 3, 1951). City of Riverside ordered to close two grade cross-he Atchison, Topeka and Santa Fe Company tracks.

)8 (July 3, 1951). County of Marin authorized to reopen a grade er Northwestern Pacific Railroad Company tracks previously closed on under D 45800.

DECISION No. 45919, APPLICATION No. 31431

(July 3, 1951)

· Service Company granted increase in rates charged for water service ra Costa District.

mas, Matthew, Griffiths, and Greene, by *Robert Minge Brown* for *Phillips and Avakian* by *Spurgeon Avakian* for the Committee to Water Rate Increase; *John A. Nejedly,* City Attorney, for the City Creek; *Carl G. Schwarzer* and *George Leon* for the Idyllwood Im-Association; *J. L. Knapton* for the Crockett Community Council.

OPINION

proceeding initiated by California Water Service Com-ı authority to increase the rates charged for water service Costa District. That district includes the portion of Contra along the south shore of the Carquinez Straits and Suisun)leum and Port Chicago and areas which extend southerly Clayton Valley to Clayton and through the San Ramon ıville. The area served aggregates about 39½ square miles ent population of approximately 60,000 people. The initial the proceeding was filed on May 25, 1950. Hearings on ı were conducted in Concord on April 26, 27, and May 2, cluded on May 3, 1951, in San Francisco and the matter he close of oral argument.

ent Contra Costa District of California Water Service he outgrowth of a system started in 1887 in the town of supply industrial demands in the area. In 1889 the Mar-vas acquired, and in 1898 the system was incorporated as Water Company. In 1918 the Martinez distribution system e City of Martinez. The Port Chicago System, started in ownsite developer, was taken over in 1911 by Bay Point

1929 it had increased to about $1,358,000, and at the e[illegible]
about $6,550,000, so that the present operators have ca[illegible]
installation of about 80% of the plant investment.

Water for the district is obtained from three source[illegible]
winter and spring runoff, when Sacramento River water is
low saline content, water is pumped from Mallard Slou[illegible]
Pittsburg, a distance of 7½ miles to the one-billion-gallon [illegible]
voir. Additional water is pumped from wells in the Gove[illegible]
field south of Clyde and the Galindo and Hollar fields n[illegible]
of Concord. These primary sources are supplemented by
water from the Contra Costa County Water District su[illegible]
Contra Costa Canal of the U. S. Bureau of Reclamation's [illegible]
Project.

Untreated water is delivered to oil refineries and stea[illegible]
erating plants at Avon and Martinez. For other custom[illegible]
must be filtered and aerated to eliminate odors and forei[illegible]
treated to neutralize and reduce bacteriological impurit[illegible]
variations in elevation of the areas in which service is de[illegible]
sea level to elevation 600, necessitates the subdivision of t[illegible]
23 pressure zones. To supply water to these pressure zone[illegible]
come friction losses in the long transmission lines, 31 boo[illegible]
stations are required. At the end of 1950, applicant oper[illegible]
million feet of pipe to serve 14,119 customers, and dur[illegible]
about 4.1 billion gallons of water. Since 1945, the numbe[illegible]
has increased 163%, the length of mains 88%, and the vo[illegible]
delivered 20%.

Applicant contends that the rates which it is presen[illegible]
charge for water service, and which have remained at lev[illegible]
28 or more years ago, must now be increased because of h[illegible]
in the cost of equipment, materials, and services which [illegible]
in conducting its operations. Its general manager cited
increases as typical, and estimated the combined effect o[illegible]
at about 100%.

Item	*Prewar*
Mains, 6-inch steel, installed, per ft.	$1.20 [1]
Mains, 8-inch steel, installed, per ft.	1.47 [1]
Service, metered ¾-inch, installed, ea.	25.30 [1]
Pump, booster, complete installation	4,493.00 [2]
Tank, elevated steel, 500,000-gal. installed	10,994.00 [1]

[1] 1941, [2] 1943, [3] 1950, [4] 1948.

istrict under present and proposed rates:

	1950 Recorded	1950 Adjusted Present Rates		1951 Estimated Proposed Rates	
		Company	*CPUC Staff*	*Company*	*CPUC Staff*
e ----	$779,303	$829,904	$827,856	$1,224,834	$1,230,965
es					
----	512,592	530,259	512,883	557,400	578,995
----	71,523	71,044	68,469	226,255	227,447
----	32,056	32,056	70,100 [1]	36,540	77,100 [1]
----	616,171	633,359	651,452	840,195	883,542
----	163,132	196,545	176,404	384,639	347,423
----	5,822,000	6,090,000	5,822,000	6,785,000	6,616,000
----	2.80%	3.2%	3.03%	5.7%	5.25%

3,100 amortization.

lso presented earnings upon depreciated rate bases (un-
e less depreciation reserve) with interest on the depre-
included with the annuity as an operating expense. For
djusted at present water rates, the rate of return by this
and for 1951 estimated at the proposed rates 5.27%.
above table, it can be seen that applicant's earnings in
sent rates were about 3%, and that the proposed rates
about 5.7% on the rate base estimated by applicant as
1. In that estimate, the increase in revenue from new
nts to about 10%, and the proposed rates would increase
34%. About one half of the increased gross revenues are
reased tax liability under the currently effective federal
of 47%.
estimate of net revenue by the sinking fund method is
n applicant's. The rate base also is somewhat less, about
he indicated return is 5.25%. The major difference be-
ates of expenses is $40,560 in the allowance for depreci-
tization. Applicant's estimate of depreciation expense is
tors developed by Commission staff engineers in a 1937
proceeding, the staff has made a detailed study of the
nce with, and characteristics of, present plant and prop-
stimate of depreciation and amortization expense is based
.
nce in estimated rate bases is primarily due to treatment
ed in earlier years to develop sources of water supply

the present rates in Contra Costa istrict are insufficien adequate return, and that the increased rates proposed b not yield more than a reasonable return on the district r

The filing of this petition by applicant prompted a tomer opposition. A large proportion of applicant's c statements urging this Commission to deny applicant on the basis that rates were already much higher than in c munities and adjoining service areas. The Board of Contra Costa County filed its resolution of September 1 Commission, stating that in the opinion of the Board th not merited, that they would tend to increase the cost of they should be denied by the Commission.

Although notices of hearing were sent to all int specific presentation in opposition was made by those pa listed as appearances. The City of Walnut Creek, throug ney, took an active part in the proceeding by presentatio testimony and by participation in cross-examination. Gen the City contended that applicant should not be gran until it improved the quality of water served, increased its operating practices, and established a system of rat treat customers with greater equity. In this connectio the lower separate schedule of rates for the Port Chica inated, that wholesale rates to the City's own distrib designed to produce the same level of net return for t allowed to applicant, and that applicant's proposed a charge type of rate be adopted.

Home owners in the area were represented by the Committee to Defeat the Water Rate Increase. This sponsored by a number of neighborhood improvement cities of Walnut Creek and Concord, the chambers of co areas, and the Contra Costa Realty Board. It was the co committee that present rates are extremely high and th rates are exorbitant, based upon general knowledge of rat and not upon the costs incurred by applicant to supply committee surveyed the water bills in Eldorado Park, Pleasant Hills area. These subdivisions are solidly bui currently familiar mass subdivision type of developmen lots approximately ¼ acre in size with houses in the $10,0 Water is used for the usual household requirements and

than those presently in effect tended to restrict the land-
area and detracted from the value of property in the com-
rates also fostered installation of private wells and the
istricts to distribute raw water for garden usage from the
Canal to residential areas in the vicinity. Because the rates
ring East Bay Municipal Utility District are more favor-
charged by applicant, there is considerable local sentiment
panding the District's service area and substituting its
t of applicant.

suggested that this application for increases in rates be
t applicant seek to improve its earnings in other districts.
tended that the relatively high level of present Contra
raised, would induce extreme hardships on Contra Costa
that perhaps such hardships would not be created by
ner areas.

of the contentions suggested by the parties to the proceed-
careful consideration, it appears that the continued ability
meet the expanding demands of its present customers
the needs of the large numbers of new customers who are
area is at least one of the most important single factors
community development. If the rate of that development
ined under present inflated price levels, as it gives every
ing, then the impact of rising prices on utility costs would
e the same recognition as reflected in the price of lots,
vork, and other physical elements of the area expansion.
proposes to withdraw and cancel all flat rate service
ently effective fire protection schedules. In the original
t proposed increases in both the quantity rates and mini-
f its present form of meter rate. It also proposed to retain
s in its Port Chicago service area different from that
ne remainder of the Contra Costa District.

of the evidence submitted herein, applicant furnished a
e results of an allocated cost of service study. That study,
venues and expenses of the year 1950 adjusted, indicated
ts, including return on capital, exceeded revenues by 35%.
f water varied considerably by classes of customer and by
Port Chicago system, the customer cost was shown to be
h, to which demand costs of 14.8 cents and supply costs

on load factor of the diversion of garden irrigation requir
supply of raw water from the Contra Costa Canal, applica
alternative service charge form of schedule at the hear
asserted that it had designed the service charge form of sc
the results of the cost analysis in spreading the cost of s
the objective of producing about the same level of reven
derived from the minimum charge form of rate proposed
tion. The record shows that estimated 1951 revenues, w
charge form of rate, would be $9,484 less than the pro
charge form.

The following tabulation indicates typical compara
between the present and proposed rates at a number o
consumptions:

MONTHLY BILL

BASIC $\frac{5}{8}$-INCH METER

Consumption Cubic Feet	*Main System* Present Rates	Proposed Rates Min. Chg.	Serv. Chg.	*Port C* Present Rates	P Min
0	$1.25	$2.00	$2.10	$1.25	$
100	1.25	2.00	2.38	1.25	
400	1.40	2.00	3.20	1.25	
1,000	3.50	4.94	4.85	2.50	
2,000	7.00	9.84	7.60	4.50	
3,000	10.00	14.74	10.35	6.00	
5,000	16.00	21.94	15.85	9.00	1

From the foregoing tabulation, it is apparent that u
rate practices it is not now possible to implement the
Creek's proposal to remove the existing rate differential
Chicago customers and all other customers. The use of r
a "readiness to serve" charge, however, does tend to r
ing differentials.

Applicant supplies raw and finished water to a n
industrial customers. At the time the application was
served such customers under special contracts at rates
filed tariff rates. The effective contracts had been aut
Commission. Subsequently, applicant canceled its speci
finished water and has since billed such customers at fi
Applicant intends to apply the proposed rates to such
authorized. It seeks authority to increase the rates ap
water service under the existing special contracts for su
present rates make a distinction in charge for water o
company from the river and water obtained from the

onnection that the Port Chicago system is entirely sep-
rest of the district and has its own production, storage,
n facilities. The water treatment problems are consid-
An emergency standby interconnection between the two
ntained. Typical bills for representative consumptions
ie following tabulation:

INDUSTRIAL SERVICE
MONTHLY BILLS FOR RAW WATER DELIVERIES

Present Rates		*Proposed Rates*
River Water	*Canal Water*	*All Water*
$4.00	$5.72	$6.22
20.00	28.60	31.10
40.00	57.20	62.20
200.00	286.00	311.00
400.00	572.00	622.00
1,350.00	2,410.00	2,565.00
2,350.00	4,520.00	4,775.00
4,350.00	8,740.00	9,195.00

stimates that the proposed raw water rates would, if appli-
an increase of about $15,600 in 1951, an increase in such
ut 17.4%.

circumstances, it appears appropriate to authorize appli-
rate changes, including the alternate schedules of rates
application herein, that is, those in which the service
ut distinctly from the commodity charge. Particularly
litions which prevail in this district, it is believed that
e structure will prove less discriminatory between classes
vould the type of rate structure presently in effect and
inally proposed by applicant to be continued in effect.
made an oral request that it be authorized to prorate the
ed during the first billing period after the effective date
s upon the basis of the average daily consumption estab-
irst meter reading subsequent to that effective date in
the necessity of reading all the meters on the effective
edure appears reasonable and may be followed by the

ORDER

Water Service Company, having applied to this Com-
order authorizing certain increases in rates and charges
Costa District, public hearings having been held, and the
been submitted for a decision,

1. Applicant is authorized to file in quadruplicate
mission after the effective date of this order, in c
the Commission's General Order No. 96, the sch
shown in Exhibit A attached hereto and, after no
(5) days' notice to the Commission and the p
said rates effective for service rendered on and a
1951; and concurrently to cancel existing rate sc
seded by the schedules hereinabove authorized.
2. Applicant, within forty (40) days from the effecti
order, shall file with this Commission four (4) se
regulations governing customer relations applicab
Contra Costa District, each set of which shall con
map or sketch drawn to an indicated scale upon
inches in size, delineating thereupon by distinctiv
boundary of applicant's present service area an
thereof with reference to the immediate surroun
provided, however, that such filing shall not be
final or conclusive determination or establishmen
cated area of service, or portion thereof.
3. Applicant, within forty (40) days after the effecti
order, shall file four copies of a comprehensive
an indicated scale of not less than 400 feet to the in
by appropriate markings the various tracts of lan
served and the location of various properties of ap

IT IS HEREBY FURTHER ORDERED that appli
ized to revise existing contracts with certain industrial
the supply of raw or untreated water, and to incorpora
schedule of charges shown in Exhibit B attached hereto a
notice as may be required by the provisions of each of t
tracts, to make said rates effective for such service rende
but not earlier than on August 1, 1951. Each such revised
be prepared in conformity with Paragraph X-A of the
General Order No. 96 and, within thirty (30) days after
thereof, applicant shall submit two copies of each revise
filing.

The effective date of this order shall be twenty (20)
date hereof.

Dated at San Francisco, California, this 3rd day of

MITTELSTAEDT, CRAEMER, HULS, POTTER, MITCHELL, C

(Exhibits A and B not printed herewith)